Chief Justice's Working Group on Access to Justice

Conference

1st and 2nd October 2021

Organised by the Office of the Chief Justice in conjunction with the Law Society of Ireland, FLAC (Free Legal Advice Centres), The Bar of Ireland and the Legal Aid Board

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Papers, presentation and summary of the Conference organised by the Office of the Chief Justice in conjunction with the Law Society of Ireland, FLAC (Free Legal Advice Centres), The Bar of Ireland and the Legal Aid Board

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Members of the Chief Justice's Working Group on Access to Justice at the opening of the Conference on Access to Justice held in October 2021.

(From L-R): Ms. Eilis Barry, FLAC; The Hon. Mr. Justice John MacMenamin, Judge of the Supreme Court; The Hon. Mr. Justice Frank Clarke, Chief Justice; Mr. Philip O'Leary, Legal Aid Board; Ms. Attract O'Regan, Law Society of Ireland; Mr. Joseph O'Sullivan, Bar of Ireland.

Members of the Working Group

At the date of the event, the Working Group comprised the following members:

- **The Hon. Mr. Justice Frank Clarke, Chief Justice***
- **The Hon. Mr. Justice John MacMenamin**, Judge of the Supreme Court
- **Mr. Joseph O'Sullivan BL**, nominated by the Council of the Bar of Ireland
- **Ms. Attracta O'Regan**, nominated by the Law Society of Ireland
- **Mr. Philip O'Leary**, Chairperson, Legal Aid Board**
- **Ms. Eilis Barry, Chief Executive,** FLAC (Free Legal Advice Centres)

* Mr. Justice Donal O'Donnell was appointed Chief Justice on the 11th October 2021.

**Philip O'Leary completed his term of office as Chairperson of the Legal Aid Board in November 2021, and is replaced by John McDaid, CEO of the Legal Aid Board.

Secretariat: Sarahrose Murphy, Senior Executive Legal Officer to the Chief Justice

Patrick Conboy, Executive Legal Officer to the Chief Justice

Executive Summary

Background

Equality before the law is a fundamental principle in a democratic state. To achieve it, there must be equal access to justice. Against the backdrop of this fundamental principle and recognising the potential for the Judiciary to work with some of the other key actors with an interest in advancing access to justice, the then Chief Justice established a Working Group. Other members of the Working Group include a judge of the Supreme Court, the Chief Executive of FLAC, a representative of The Bar of Ireland, a representative of the Law Society and the Chair of the Legal Aid Board.

Although the Working Group is in a good position to draw collectively from the experience and work of its members regarding issues affecting access to justice, it wished to bring together a wider group of people and organisations with an interest or expertise in access to justice issues. Moreover, it wished to hear from people with experience of unmet needs and provide an opportunity for groups and individuals with such needs to engage in a conversation about what is needed to improve access to justice.

Therefore, the Working Group decided to host a two day conference to help to inform its views and identify its strands of work. Day one involved keynote addresses from speakers who highlighted the importance of access to justice and current initiatives which are planned and underway in the justice sector which aim to remove barriers and advance access to justice. This set the scene for the second day of the event, which involved a plenary overview of unmet legal needs followed by six breakout workshops on specific themes led by moderators and panellists who delivered presentations which opened discussions involving people and organisations with an interest in each of the selected issues.

The Access to Justice Landscape

While one event could never have encompassed a discussion of every issue which comes under the umbrella of access to justice, the conference was broad and focused on as wide a range of issues as possible. This allowed for the emergence of some helpful themes in relation to the access to justice landscape.

From the outset, the Working Group was conscious of the broad and multi-faceted nature of the concept of access to justice. As noted by the then Chief Justice in his opening remarks, “the range of issues is wide and potential improvement requires action across many strands.” This was illustrated throughout the conference by the diverse array of speakers who participated and the breadth of the issues discussed.

Time and time again during the conference, participants emphasised that access to justice involves complex, interconnected and overlapping issues. While the breakout workshops focused on different topics, many of the same issues were highlighted in a number of workshops. For example, the issue of legal aid featured in the remarks of a number of speakers during the plenary sessions, in addition to five of the six breakout workshops.

Coordination

One take away which emerged was the potential for greater coordination of relevant actors. Despite the interlocking nature of the issues and the interdependencies in the system, the conference heard that there is no broad based forum encompassing a 'coalition of reformers'. A number of speakers referred to the Canadian system - Canadian Action Committee on Access to Civil and Family Matters, which brings together a wide group of participants concerned with civil and family justice in order to coordinate efforts to bring about reform - as something from which to potentially draw inspiration.

Clustered injustices

The issue of 'clustered injustices' featured throughout the event.

Professor Trevor Farrow, Chair of the Canadian Forum of Civil Justice, described in his address how his extensive research on the cost of delivering access to justice, and the cost of not doing so, found that 58% of people experiencing one problem reported experiencing two or more problems. He described a cascade effect whereby the more problems people have, the more likely they are to suffer further problems, and referred to a number of predictive variables, such as age, disability, number of children, income and gender. His study also found that justiciable problems trigger health and social problems.

Eilis Barry quoted from a book by Luke J. Clements, *Clustered Injustice and the Level Green*, in which he states that for many people living in disadvantage their legal problems are multiple, interconnected and messy.

Workshop speakers provided practical insights which aligned with these findings. For example, Gary Lee, Managing Solicitor at Ballymun Community Law Centre, spoke in Workshop D on Accessibility of Courts, of how vulnerable clients often have complex and wide-ranging needs and may need assistance in multiple legal areas, suggesting that often a lack of cohesiveness between services can exacerbate the problem. He mentioned that 70% of the centre's clients are identified as having some form of disability. Dr. Tricia Keilthy, Head of Social Justice and Policy at the Society of St. Vincent de Paul, indicated in the Workshop on Access to Legal Services for People in Poverty and Disadvantaged Groups that although the primary issues which volunteers

encounter are issues such as energy poverty, utility arrears, education costs, and food poverty, what is often in the background are legal issues, involving family law, housing issues, domestic violence, and debt.

A continuum

Eilis Barry spoke of FLAC's positioning of access to justice as a continuum of issues, including: information; legal advice; advocacy; access to the courts; access to an effective remedy and fair and just laws. She considered that viewing unmet needs as a continuum and committing to deal with needs earlier could have a significant implication for costs. This ties in with Professor Farrow's address, which advocated for meaningful access to justice that focuses on people and their ability to access information, institutions and organisations and to understand, resolve and prevent legal problems, rather than the traditional approach of focusing on institutions, courts, tribunals and lawyers. Angela Denning, CEO of the Courts Service, suggested in her presentation that we need to rethink the traditional approaches to delivering services by making those services more personal to the individual and their situation.

Again, this is consistent with the emphasis in many of the workshops on the benefits and need to deal with problems early on in the continuum, or to prevent them from occurring in the first place.

Change in Progress

Speakers highlighted many positive changes in progress or planned to remove barriers and improve access to justice. The Minister for Justice, Heather Humphreys T.D., provided an overview of many important reform projects being advanced by the Department of Justice, including:

- Plans to implement the report of the Review of the Administration of Civil Justice, chaired by Mr. Justice Peter Kelly;
- The Supporting a Victim's Journey plan to implement the Report of the Review of Protections for Vulnerable Witnesses in the Investigation and Prosecution of Sexual Offences;
- Family justice reform, including: the General Scheme of a Family Court Bill to establish specialised family law courts; and the construction of a purpose built family law court complex at Hammond Lane.
- A commitment in Justice Plan 2021 to carry out a review of the civil legal aid system;
- A Judicial Planning Working Group to review the number and type of judges needed;
- A proposed Judicial Appointments Commission to reform the appointment process for judges;

- Planned research to undertake an economic analysis of models or approaches to reducing litigation costs in Ireland.

Angela Denning highlighted the Courts Service's *Long Term Strategic Vision to 2030: Supporting Access to Justice in a Modern, Digital Ireland*, which it is implementing through its Modernisation Programme. It is working towards delivering just, user centric services with a focus on accessibility, timely administration of justice, simplified services and processes, with an emphasis on collaborative working.

Although the focus of the workshops was on unmet needs, they provided a forum for panellists to refer to the positive work being undertaken by organisations and projects working to support access to justice.

This change in progress was noted and very much welcomed by many participants throughout the event.

Unmet Need

However, a clear message arising out of the event and, in particular, the workshops, was that the needs of many are not met by the current system. As is evident from the reports of each of the workshops, the event only scratched the surface to uncover some aspects of unmet need. Yet, the diversity, volume and experience of participants generated very rich conversation and will undoubtedly assist the Working Group in considering how it may contribute to improving access to justice.

Need for research

Eilis Barry noted that "in talking about unmet legal needs, the nature and level of unmet legal need in Ireland is neither well understood or comprehensively researched." There may be more scope for some research to be carried out in relation to unmet legal needs and its social and financial consequences in order to provide an evidential basis for meeting such needs.

Investing in justice

The research presented by Professor Trevor Farrow provides an evidential basis in relation to other jurisdictions for the proposition that the benefits of investing in justice far outweigh the costs and that there are substantial economic and social costs in not doing so. He suggested that justiciable problems trigger health and social problems and that the benefits of investing in justice include: more efficient courts; lower unemployment rates; lower eviction rates; reduced homelessness; reduced government spending on social assistance; employment insurance; and healthcare. Angela Denning noted that the inability to access justice can be both a result and a cause of disadvantage and poverty. The Chief Justice noted in his opening remarks that an analysis of what we spend on our justice system in Ireland, compared with comparators both in the European Union and in other countries with similar legal systems to our own, places Ireland at or near the bottom.

Legal aid

A recurring issue put forward was the need for a comprehensive review and reform of the civil legal aid system, including a consideration of eligibility criteria, areas of law covered, the functions of the Legal Aid Board and the way in which services are delivered. Judge Síofra O'Leary's keynote address provided a useful contextual picture and traced the development of caselaw under the European Convention on Human Rights since *Airey v Ireland.*[1] She also provided an account of developments in EU law and, in particular, Article 47 § 3 of the Charter of Fundamental Rights of the European Union regarding legal aid.

Information and advice

The need for legal information and advice was highlighted extensively. The benefits of provision of information by small, local law centres, the potential to consolidate resources which already provide information on the law, the importance of actively reaching out to people to provide information, in particular to vulnerable people and communities and disadvantaged groups, and the benefits of legal community outreach were just some elements of the discourse.

[1] App no. 6289/73, 9 October 1979

Accessible law, rules and procedures

There was an emphasis throughout the event on the importance of using plain language in the law itself, and in material which provides information to people about the law and their rights. Participants spoke of the need for simplification at all stages of the process, from the way in which information is provided to the streamlining of court rules and forms and the submission of court documents. The role of lawyers in simplifying the process for clients was also raised.

Equal Treatment

There was an emphasis, in particular in Workshop F on Equal Treatment in the Court Process, but additionally in some of the other workshops, on the need for a 'vulnerability agnostic' system, which provides equal access to justice to all users, while taking into account particular and diverse needs. Participants discussed the value and implications of the statutory public sector equality and human rights duty in promoting equality, preventing discrimination and protecting the human rights of people accessing the courts and other relevant services, as well as the potential to learn from the United Kingdom's revised Equal Treatment Bench Book. The need to promote diversity and to ensure participation of those affected by policies, plans and decisions also featured.

Litigants in person

Another area of need was what were described as intellectual, practical emotional and attitudinal barriers affecting litigants in person. While Workshop D on Accessibility of Courts focused heavily on this issue, many participants in other workshops referred to it in the context of other topics.

Pro bono work

There was an acknowledgement of the continuing embedding of pro bono work by the legal professions, in particular through the Pro Bono Pledge coordinated by FLAC's PILA project and the potential for further progress in this area.

Outreach and Education

The many benefits of outreach by the legal community and potential for further investment in this area and collaboration among the relevant actors to advance access to justice through education and awareness was a key outcome of Workshop C.

Specific areas of law

In addition to the above high level takeaways, the expertise and experience of participants gave rise to helpful suggestions with regard to specific areas of law, in particular in relation to access to justice in environmental matters, which was the topic of Workshop B.

In concluding the event, the then designate Chief Justice noted that there are many ways in which access to justice can be improved progressively and incrementally, with a significantly cumulative impact. He expressed a hope that the initiative that this conference represents will stimulate developments large and small.

Day 1

Friday 1st October 2021

Introductory remarks - Mr. Justice Frank Clarke, Chief Justice

Mr. Justice Frank Clarke
Chief Justice

Can I welcome first the small number who could be accommodated here in Blackhall Place but most particularly those of you who have remotely joined this plenary session of what I hope will be an important conference.

As some of you may know, I have returned to the theme of barriers to access to justice on regular occasions during my term as Chief Justice. It became increasingly clear to me that there is no single solution or silver bullet. The range of issues is wide and potential improvement requires action across many strands. With that in mind I established, some time ago, a working group to see if we could make some real progress. I am particularly grateful that the FLAC Free Legal Advice Centres, the Legal Aid Board, the Bar Council and the Law Society all agreed to participate in that working group. I should emphasise that it was never intended that this group would be representative of all with a real interest in the topic. However, it was felt that a small working group was likely to be more effective.

However, recognising the need to widen the expertise and viewpoints available, this conference was planned. As our thinking developed, it seemed to us that there were two major strands to the debate. The first, which is perhaps a significant focus in today's plenary session, involves the response of existing institutions whether that be government, the courts or state bodies. Indeed, it was clear that there were significant plans either being put in place or in the course of implementation by those institutions which can have a real effect on improving access to justice. The purpose of that aspect of the conference was to draw attention to those measures, to encourage that they continue to be implemented and to allow a debate to develop around further improvements.

However, it soon became clear to us that there was a second major strand which had, perhaps, not been the subject of sufficient attention to date. While it is easy to see how simpler court procedures, easier access to court systems, better legal aid and the like

can make a real contribution, it also became clear that those measures, important as they are, would not of themselves provide anything like all the answers.

There are many who do not even know that there may be a legal aspect to their problems and that the law might provide solutions or at least an improvement in their situation. No matter how accessible our courts system may be or how supportive a model of legal aid we may achieve, it would be of little use to persons who do not know that there may be a legal solution to their problems in the first place.

While the State and the courts have, of course, a significant role to play, there are others, including the practising professions, who can bring their expertise to bear. We were, of course, aware of programmes designed to encourage lawyers to provide *pro bono* assistance but wondered whether that important resource might not be capable of being harnessed in a wider and more effective way.

We also reflected on the fact that there are undoubtedly areas where the problems of access to justice can be particularly acute. Minorities, marginalised groups or the vulnerable obviously run a real risk of having less effective access to justice than others. Particular areas of the law also can throw up special challenges.

We, therefore, decided that the focus of the second day of this conference would be on workshops designed to address specific issues with a view, hopefully, to identifying new and better ways in which we may be able, in the future, to widen access to justice in areas where it is particularly limited.

At a very simplistic level the purpose of today's plenary session is to encourage the continuation of the initiatives adopted by major state bodies and to provide reasons why those initiatives make sense. The purpose of tomorrow is to help build a roadmap for further, and potentially more diverse, actions which may need to be taken in the future.

I am grateful that Minister Heather Humphreys has accepted our invitation to speak today. Government cannot provide all of the solutions needed to improve access to justice but many necessary measures cannot be advanced without significant government participation. For example, some of the streamlining of civil procedure recommended by the Kelly Review will require legislation. Much of the implementation of the Courts Service Modernisation Programme will require resources. None of this can be done without the Government being on side. Indeed, I see an overarching theme of today's presentations as drawing attention to the interlocking nature of many of the questions which need to be addressed.

I welcome a number of significant initiatives taken by Government in recent times. I will leave it to Minister Humphreys to deal with the details, but the commitment to implementing the recommended civil procedural reforms, the funding for the Courts Service Modernisation Programme, the Programme for Government's provision for a

review of civil legal aid and, indeed, the establishment of the working group now considering judicial numbers are all valuable contributions. I, of course, accept that government does not have a bottomless pit of funds. The health service, education and many other important aspects of life have legitimate claims to enhanced funding. However, I think it is important that the voice of the justice system and the need for enhanced access to justice at least has a seat at the table.

I have commented before, but it is worth repeating, that an analysis of what we spend on our justice system in Ireland, compared with comparators both in the European Union and in other countries with similar legal systems to our own, places Ireland at or near the bottom. I do accept that international comparisons can be difficult. What counts as a judge in one state may be considered an administrative tribunal in another. Judicial numbers can be affected by factors such as the presence of lay magistrates in the United Kingdom system. It is not really possible to have exact comparisons and I would, therefore, accept that modest variations in numbers and sums of money spent could well be explained simply by different ways of counting.

However, an overall view of the data seems to me to demonstrate two things very clearly.

First, Ireland's position at or near the bottom of the table is so stark that it cannot be explained solely by differences in our systems or ways of counting.

Second, and perhaps equally importantly, it is clear that taxpayers in countries in the common law system end up spending very significantly less on their justice system than is spent on behalf of the taxpayers of countries in the civil law system prevalent in continental Europe. It is beyond the scope of this short address to go into the reasons for this in detail but it is fair to say that there is a significant shift, in a common law system, towards work being done by parties and their lawyers (if they have them) as opposed to being done by the court and its researchers. This significant difference has the effect of transferring cost from the taxpayer to the parties to litigation. It is at least part of the explanation as to why the Irish taxpayer spends significantly less on our justice system compared with most continental countries while the Irish litigant spends more.

There are other consequences as well. It makes it harder for the unrepresented litigant in a common law system to deal with anything other than the most straightforward of case. The moral of this story, it seems to me, is that there is a strong case that some of the money that might have to be spent had Ireland a judge-led civil law system, but which is saved by the taxpayer by our common law system, might be deployed to help those who could not reasonably be expected to adequately present their case without legal assistance and who struggle to afford it.

That is, perhaps, a moral argument in favour of greater expenditure by our government on measures designed to facilitate access to justice. I recall, just before the pandemic,

speaking to some Slovak judges who were complaining, as judges across the world tend to do, that they needed more colleagues to carry the workload. Slovakia is about twice the size of Ireland in population. But appears to have of the order of 12 times as many judges. That does not necessarily make the Slovak system better than ours but it almost certainly reduces the burden, both financial and otherwise, on litigants. The corollary of that is that there is a strong justification for spending some of the money saved by our system on enhancing access to justice.

But there is a practical argument as well. We will also have the benefit of hearing from Professor Trevor Farrow, who is a leading expert on the justification for enhanced access to justice. It seems to me that this provides a pragmatic compliment to the moral argument. Frequently we are faced with dilemmas which stem from the fact that the right thing and the practical thing pull, if not in opposite directions, at least in divergent ways. In my view, the data which Professor Farrow will present to us demonstrates that this is a case where the right thing and the pragmatic thing point in the same direction.

Of course the legal framework within which these issues arise is not just confined to our own national legal order under the Irish Constitution but also has the potential to be significantly influenced in the future both by the jurisprudence of the European Court of Human Rights but also, perhaps increasingly, by the Charter in the way in it may come to be interpreted and applied by the European Court of Justice. In that context, I am particularly happy that we will hear from Judge Síofra O'Leary who is, of course, a judge of the Court of Human Rights but also worked for many years at a high level in the Court of Justice. In this legal space we are not an island and even those who are not persuaded by the moral argument or the pragmatic argument will have to take into account the potential effects of the case law of those supra national bodies of which we are members.

While acknowledging the highly interlocking nature of the issues which need to be addressed, I would not at all like it to be thought that I am ignoring the very real part which courts and lawyers must play in finding and implementing solutions. In the very first address I gave at the beginning of the new legal year just after my appointment, I emphasised that we all have a role to play but that not all of the solutions lie within the hands of those of us directly involved in the justice system. That does not, however, mean that we do not have a significant role to play. In that context, I am very glad that we will hear from Angela Denning, Chief Executive of the Courts Service, about the role which the efficient administration of the courts can play in improving access to justice. Some of that action will, of course, interact with governmental measures in either improving legislation or providing resources. Yet another example of the interlocking nature of the necessary approach. But some of it involves things which we can do ourselves within the courts system by changing rules or practices so as to make access to justice cheaper for those who are represented and potentially possible for the unrepresented in at least a wider range of cases than might be the situation at

present. While it is always wise for a judge to await the argument before reaching a final conclusion, I suspect that one of the themes from this morning will be that the major institutions involved are taking action but that there is a long road to follow. The consequences of not taking action will be significant. There is a duty on all of us to pull together to produce coherent interlocking measures to bring about a real improvement in the situation.

But also that there are very real consequences of not taking action both legal, not least in the shape of the Court of Human Rights or the European Court of Justice, or practical in the sense of the economic detriment suffered by countries which do not have adequate access to justice. These are big picture issues but they will, I hope, lay the ground for the more granular approach which we hope to see in tomorrow's workshops.

Before handing over to our keynote speakers I would like to avail of the opportunity to make a few personal observations. The first concerns access to justice in criminal matters. It has long been considered that the criminal legal aid system provides appropriate defence to those who are charged with significant criminal offences but who do not have the means to provide for their own legal representation. To a large extent I consider that position to remain the case today which is why the focus of this conference is on access to justice in non-criminal matters. However, that does not mean that we should be complacent. Like all systems, things change and models which worked well in the past may cease to be fully fit for purpose. A number of criminal practitioners have drawn to my attention the fact that the disclosure obligations which now lie on the prosecution frequently involve defence legal teams having to go through extensive documentation to ascertain whether any of it may be relevant to an upcoming trial. The digital age has created an exponential expansion in the volume of material that can frequently be available and be of at least some potential relevance to litigation. Indeed, that very problem has, in certain types of civil cases, led to the well-known problems associated with the cost and complexity of discovery. The new criminal procedure regime may also need attention in the context of legal aid. I mention these matters to emphasise that we should not lose sight of the fact that the relatively satisfactory nature of criminal legal aid to date should not exclude a review of its continuing suitability for purpose in the future.

Criminal legal aid is, of course, principally concerned with the provision of legal assistance to defendants. However, access to justice for defendants in civil proceedings is, in my view, every bit as important as access to justice for claimants. The defendant who is unable to properly defend proceedings because they are not of a type where that can be done without legal assistance and where legal assistances is outside the means of the defendant concerned, is just as much denied proper access to justice as the claimant who cannot bring their case for similar reasons.

Indeed, I would go further. Parties, whether claimants or defendants, who are forced to settle proceedings on a basis which does not reflect an appropriate assessment of

the weight of the respective cases and the likely outcomes can just as much be said to have been denied proper access to justice if the reason why they are forced into such a settlement is because of the costs of the proceedings.

We all want to encourage mediation and alternative dispute resolution. We all favour the resolution of proceedings by agreement where that can be done. But a fair and just resolution of any legal dispute should be based on a genuine assessment of the merits of the case.

These issues can loom particularly large where there is a disparity in resources between the competing interests. A well-resourced party, whether claimant or defendant, may be able to exercise undue influence on the outcome of settlement negotiations precisely because they can afford to take a certain course which is not open to a poorly resourced opponent. That sort of situation can arise across almost the whole range of litigation and is, in my view, just as much a barrier to access to justice as other more obvious impediments. The small or medium sized enterprise which is forced to settle proceedings on terms much less favourable than a reasonable assessment of the case would suggest, and has to do so because it just cannot afford to mount an appropriate defence, is just as much denied access to justice as a claimant with a good case which they cannot afford to bring.

It may be stating the obvious but I would like, finally, to return to a point which I made in that first address at the beginning of the new legal year in 2017.

Not everyone may agree that our laws are ideal and, indeed, there may be competing views as to what fair and just laws should look like. Not everyone may agree that all of our judges are fair and competent, although international assessments frequently place us in the upper range of the league tables in that regard.

However, even if our laws were universally considered perfect and every judge agreed to be the equivalent of Solomon, it would little avail a party whose position those laws favoured, if that party has not reasonable access to a court to ensure, if all other means of resolution fail, that their position is vindicated.

Mr. Justice Frank Clarke, Chief Justice, delivering his opening address at the conference on Access to Justice held remotely. Observing Chief Justice Clarke's address are members of the Working Group on Access to Justice.

Access to Justice: Widening access, removing barriers, improving the process - Heather Humphreys TD, Minister for Justice

Heather Humpreys TD
Minister for Justice

Chief Justice Clarke, distinguished guests, I am honoured to join you today on the topic of improving access to justice.

I am not just honoured to join you for this conference – but for one of your last official engagements, Chief Justice.

I have no doubt you are looking forward to a well-earned break after you stand down on October 10th.

You will, I am sure, have plenty of time to relax and indulge in some of your passions.

Unfortunately, there are not that many race venues in my own county of Monaghan to invite you to.

There are plenty, of course, in Meath.

Perhaps Minister McEntee, when she returns from maternity leave, will gladly host you for an afternoon's racing!

I might add that I would be only too glad to attend, too.

On a serious note, Chief Justice, it is fitting that we are discussing access to justice at your seminar in the final days of your term.

You have given the State great service, not least during the pandemic as you steered the Judiciary through the most difficult of circumstances working closely with the Courts Service.

The last year and a half have been remarkably complex and important for us all at both the personal and professional levels, with the difficult impact of the pandemic coinciding with an ambitious Modernisation Programme for the Courts.

I want to commend the Judiciary and the entire staff of the Courts Service for what has been achieved during this challenging period.

I also want to personally commend the Chief Justice, Presidents and all of the judiciary for the leadership you have shown in embracing the new practices and technologies that are at the core of modernising our justice system.

On today's topic, I know, Chief Justice, that widening access to justice, removing barriers, and improving processes are subjects very dear to you.

It is also an agenda that is a priority for me as Minister for Justice, for Minister McEntee and for the Government.

Widening access to justice means many things.

It means that all our citizens can readily access the legal system and services when they need it.

This may be at times of difficulty in their lives; or when they may be enforcing a contract or buying a home.

But it also means ensuring that our legal system and the people working within it better represent the Ireland of today.

As part of our overall plan to increase diversity across the justice sector, I firmly believe there must be greater gender balance and diversity across the legal sector.

We can achieve this through reform of legal education - by breaking down barriers which prevent a wider pool of people entering the legal profession.

These barriers that aspiring lawyers continue to face at the outset of their careers must be addressed for once and for all.

Widening access to justice means additional judicial resources, as well as reformed procedures and work practices, to reduce delays in our courts.

It also means ensuring that those who need to access justice feel comfortable in engaging with our legal system – those who need recourse to the Family Courts, for example, and victims of Domestic, Sexual and Gender Based Violence.

It means embedding and building upon the many reforms implemented during the pandemic to achieve a truly Digital First legal system.

Technology has played a significant role in keeping business going through the courts during the pandemic.

In-court technology allows for the remote appearance of witnesses, prisoners and other parties to a physical courtroom setting; the digital display of evidence; and digital audio recording of proceedings.

Significant investment has enabled these new technologies to be installed in courtrooms around the country.

And your Modernisation Programme continues apace and is a credit to all who work in the Courts Service.

In acknowledging the achievements and new initiatives, I also want to commend the excellent cooperation that takes place on a daily basis between the courts and my Department.

We continue to appreciate the expert assistance and insights that you share with us on the daily operation of our judicial system.

These are invaluable, not just in policy formulation and in the preparation of legislation - but also in terms of maintaining public confidence and engagement in our joint endeavours.

Legal aid is central to ensuring equality of access to justice, regardless of financial means.

Justice Plan 2021, published by Minister McEntee commits us to a review of the Civil Legal Aid Scheme this year.

We have long held the aspiration that justice should be blind not only in application, but in opportunity.

In May, it was announced that the Legal Aid Board will no longer include the Housing Assistance Payment in their calculation of entitlement to civil legal aid. This will have a positive impact for those who are of modest means and are in receipt of HAP or any other housing support measure provided by a Government department or any other public body.

The General Scheme of a Criminal Legal Aid Bill is being prepared and it will transfer the administration of the Criminal Legal Aid Scheme to the Legal Aid Board.

The Report of the Review of the Administration of Civil Justice, chaired by Mr. Justice Peter Kelly made over 90 recommendations across a range of areas to strengthen the administration of justice.

I have no doubt that, when implemented, these recommendations will transform the civil justice system for those who work within it and people who use it.

An implementation group has been established to oversee and monitor execution of the recommendations.

An implementation plan is being finalised and I will to bring it to Government and publish it by the end of the month.

I can tell you today, however, that some of its key actions include:

- Legislation will be brought forward by my Department to reform Judicial Review, Discovery, Multi - party Actions and changes to improve Court procedures,
- A program of standardisation and simplification of court forms, and,
- Wide ranging operational changes to how the Irish Courts are run, including providing more information to litigants without legal representation and a comprehensive update of the Courts IT systems.

As I mentioned earlier, tackling the scourge of Domestic, Sexual and Gender Based Violence is a priority for me, Minister McEntee and the Government.

We have had lengthy discussions at Cabinet on the issue and everyone, including the Taoiseach, is determined to help victims and get tough on perpetrators.

Minister McEntee's Supporting a Victim's Journey Plan is a detailed roadmap on how to implement the recommendations of the O'Malley Review.

Supporting a Victim's Journey will protect and support vulnerable witnesses during the investigation and prosecution of sexual offences.

We are working to create a system that supports victims and empowers them to report offences - knowing they will be supported, informed and treated respectfully throughout the criminal justice process.

We hope to provide for court procedures that support a faster and less adversarial resolution of family law disputes in specialised centres.

One of the Plan's key recommendations is the development and rollout of training for all personnel a victim may come into contact with as they navigate the justice system.

This includes An Garda Síochána, the Director of Public Prosecutions, the legal profession and the judiciary.

It is recommended that all judges presiding over criminal trials for sexual offences and all lawyers appearing in such trials should have specialist training.

I know training has already begun under the Judicial Council and I urge all members of the judiciary to avail of this training as soon as possible.

Separately, the Bar of Ireland's existing Continuous Professional Development (CPD) programme incorporates training for barristers dealing with vulnerable witnesses.

In September 2020, Government approved the drafting of a Family Court Bill to provide for the establishment of a District Family Court, Circuit Family Court and a Family High Court as divisions within the existing court structures.

The General Scheme of the Bill is awaiting pre-legislative scrutiny by the Joint Oireachtas Committee on Justice.

The drafting of the Bill will be progressed as a matter of urgency, with a view to the Bill being published by the end of February 2022.

I believe these are landmark reforms which will develop a more efficient and user-friendly family court system that puts families at the centre of its activities, provides access to specialist supports and encourages the use of alternative dispute resolution in family law proceedings.

The development of sensible, comprehensive and sensitive family law procedures, particularly for vulnerable families, will be central to the new system.

When we speak about widening access to justice and breaking down barriers, Chief Justice, reforms such as these are exactly what we mean.

These reforms will be supported by the construction of a purpose built family law court complex at Hammond Lane.

Hammond Lane is a key project in the National Development Plan and I know is the priority project of the Courts Service. We hope construction will begin in 2023, and the doors of the complex will open in early 2026.

In order to help the Courts deal with COVID backlogs and address areas of immediate need, the Government recently approved of the largest increases in the number of judges in living memory.

I know this was welcomed by many of you.

The five extra judges will also help with Ireland's participation in the Schengen Information System and strategic infrastructure development issues.

I was also pleased that in broader terms, a Judicial Planning Working Group has already convened to review the number and type of judges required in the coming five years. The Group will also examine other areas such as work practices.

This is in line with the commitment in the Programme for Government to consider the number of and type of judges required to ensure the efficient administration of justice over the next five years. The Group is to report in the spring of 2022.

I have also commissioned the OECD to prepare an independent review of the judicial resource needs, including benchmarks against international comparators, so that we have the numbers, skills, and processes to ensure access to justice over the next five years. I expect that report to be complete within the year.

The coming year will also see us hopefully enact the Judicial Appointments Commission Bill to bring greater transparency to the system of appointing judges.

The Government approved the General Scheme of the Judicial Appointments Commission Bill in December 2020, and the Bill is at an advanced stage of drafting.

The new Bill will put the Chief Justice at the head of the new Commission.

It will replace the Judicial Appointments Advisory Board.

There will be an equal number of lay persons and judges and the Attorney General will be a member in a non-voting capacity. Chief Justices have chaired the Advisory Board for 25 years and retaining this ensures that the selection process is absolutely rigorous and meets the need to have a strong, independent judiciary.

All persons who wish to considered for appointment to judicial office, including serving judges, will be required to apply to the Commission. No other process will be in place. The Commission will assess and deal with applications from serving judges and develop appropriate procedures for their assessment.

I believe the Bill will deliver substantial reform, providing for a modern and transparent system to deal with judicial appointments in the State.

In considering access to justice, we must also be frank.

Legal costs in Ireland are prohibitive and act as a barrier to people to exercising their rights before the courts.

My Department issued a request for a tender of research to undertake an economic analysis of models or approaches to reducing litigation costs in Ireland.

As you are aware, the Kelly Review Group was split on whether scales of costs should be binding or non-binding.

The research is expected to assess which of these approaches, or others it might identify, will achieve the aim of reducing costs for legal service users: citizens, businesses, as well as costs to the State.

The tendering process is still ongoing and it is expected to award the contract to a successful bidder in the coming weeks.

Once this research is complete, my officials will consider its findings and use them to inform the development of proposals in this area.

Moving to the work of the Judicial Council, I am happy to note that, under the stewardship of the Chief Justice, the work of the Council is progressing steadily and instilling confidence in its work.

It is particularly worth noting the extent of the tasks which have already been undertaken, including the adoption of personal injuries guidelines and the extensive work which has been taken across all jurisdiction in the training of judges by judges.

The Judicial Conduct Committee was formally established with effect from 30 June 2020 and I understand submitted draft judicial conduct and ethics guidelines to the Board on the 28th June as per the Judicial Council Act 2019.

The Act further states that the Council must then adopt those guidelines within a further 12 month period from that date.

Once the guidelines are in place, the Minister for Justice will then make orders bringing into operation those relevant provisions of the Act which have not yet been commenced.

I acknowledge the commitment of all involved in the Judicial Council, and I look forward to on-going developments in its work.

Before I conclude, I would once again like to pay, in particular, tribute to the Hon. Mr. Justice Frank Clarke.

As Chief Justice and as a judge of the Supreme Court and High Court, he has given a distinguished career of public service. He leaves a proud legacy of achievement.

The Hon. Mr. Justice Frank Clarke’s work has been of great importance and relevance to the citizens of the State.

His leadership, direction and innovation - in particular, as I said, in light of the COVID pandemic - has ensured that access to justice, particularly for the most vulnerable in society, was maintained.

As I noted, Chief Justice Clarke’s substantial role in the establishment of the Judicial Council was essential and has paved the way for the support of and continued excellence among the judiciary in the future.

He has also been the first Chair of the Advisory Committee on the Grant of Patents of Precedence which has modernised the path to becoming Senior Counsel.

The Hon. Mr. Justice Clarke's progressive vision and guidance in his role as Chief Justice has been an impetus for great change, progress and modernisation now and for the future.

Despite the immediate challenges of recovery and adjustment to the pandemic, the Judiciary and Courts Service have now set a path for a future of the courts system that continues to uphold the importance and centrality of access to justice.

We in Government will support you through the reforms and initiatives to which we are committed to in the Programme for Government and Justice Plan 2021.

Thank you.

Reflecting on Access to Justice from ECHR and EU perspectives

Síofra O'Leary**,** Judge, President of Section V, European Court of Human Rights

Síofra O'Leary, Judge,
European Court of Human Rights

A version of this paper was first delivered at the FLAC conference, EU Charter and the ECHR: Practice and Potential *held at the Incorporated Law Society on 18 October 2019. It was updated and adapted for the purposes of the Access to Justice conference organised by the outgoing Chief Justice, Frank Clarke, and in order to feed into the ongoing review of the Working Group on Access to Justice. The views expressed are personal to the author.*

I – Introduction

My warm thanks to the Chief Justice for this invitation to address you on the important topic of access to justice, providing some European legal context.

Two years ago, on the occasion of a FLAC conference marking the 40th anniversary of *Airey v. Ireland*[2] – a landmark Strasbourg judgment I'll return to briefly – I noted the long-standing judicial and extra-judicial commitment of the Chief Justice to questions relating to access to justice.

Since he took up office he has placed this issue squarely at the heart of many of his extra-judicial pronouncements.[3] Access to justice has also been at the forefront in leading cases in recent years in both this and the neighbouring common law jurisdictions. In Ireland, in *SPV Osus Ltd v. HSBC Institutional Trust Services* (Ireland Ltd), a case decided in 2018, the then Mr. Justice Clarke stated:

[2] *Airey v. Ireland*, no. 6289/73, 9 October 1979, §§ 24, 26 and 28.
[3] See the Chief Justice's remarks at the opening of the 2017 legal year: "there is little point in having a good court system, likely to produce fair results in accordance with law, if a great many people find it difficult or even impossible to access that system for practical reasons". Since there remain few formal legal barriers to access to justice in Ireland his point was the need to ensure practical access and to avoid many types of litigation moving beyond the resources of all but a few. Towards the end of 2019, at the launch of the Mercy Law Resource Centre annual report on homelessness, the Chief Justice again stated that there was a compelling case for a very significant increase in Government legal aid services. Another member of the Working Group, Judge MacMenamin, also broached access to justice questions in his 2020 Brian Lenihan Memorial Lecture.

> "I remain very convinced that there are cases where persons or entities have suffered from wrongdoing but where those persons or entities are unable effectively to vindicate their rights because of the cost of going to court. […] It does seem to me that this is an issue to which the legislature should give urgent consideration."[4]

Across the water, prior to becoming President of the UKSC, Lord Reed expressed similar concerns in the unanimous judgment delivered in *R (UNISON) v. Lord Chancellor*. An extract from his judgment is worth citing at length for its simple but essential message:

> "Courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced. That role includes ensuring that the executive branch of government carries out its functions in accordance with the law. In order for the courts to perform that role, people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade. That is why the courts do not merely provide a public service like any other.
>
> Access to the courts is not, therefore, of value only to the particular individuals involved. That is most obviously true of cases which establish principles of general importance […].
>
> Every day in the courts and tribunals of this country, the names of people who brought cases in the past live on as shorthand for the legal rules and principles which their cases established."[5]

An excellent example in this jurisdiction of the type of litigation Lord Reed was referring to is *State (Healy) v. Donoghue* on the constitutional right to legal aid in criminal cases.[6] This was a case in relation to which a young John MacMenamin is reported by the *Seanachaís* of the Four Courts to have advised the plaintiff's mother from a FLAC centre in Tallaght. There are many more recent examples, not least State

[4] [2018] IESC 44, § 2.5. See also his comments in *Persona Digital Telephony Ltd v. Minister for Public Enterprise*, albeit in the context of third-party funding, [2017] IESC 27.
[5] See *R (on the application of UNISON) (Appellant) v. Lord Chancellor (Respondent)* [2017] UKSC 51, § 66 - 69. The case concerned the payment of fees by claimants in employment tribunals or employment appeals tribunals. Prior to a Fees Order adopted in 2013, a claimant could bring and pursue proceedings in an Employment Tribunal and appeal to the Employment Appeal Tribunal without paying any fees. The stated aims of the Fees Order were to transfer part of the cost burden of the tribunals from taxpayers to users of their services, to deter unmeritorious claims, and to encourage earlier settlement. UNISON argued that the making of the Fees Order was not a lawful exercise of the Lord Chancellor's statutory powers, because, *inter alia*, the prescribed fees interfered unjustifiably with the right of access to justice under both the common law and EU law (many employment rights being derived, at that time, from EU law).
[6] [1976] 1 I.R. 325.

(Hoolahan) v. Minister for Social Welfare,[7] a test case on social welfare, or *McCann v. Judges of Monaghan District Court,*[8] on the question of imprisonment for failure to pay a debt, the subject of extensive Strasbourg case-law in relation to Article 1 of Protocol N° 4 to the Convention.

As an aside, the prominence given to questions of access to justice on these two islands in recent years could perhaps lead the conference delegates and Working Group to reflect over the weekend on the possible particularities of the common law when it comes to practical obstacles to access to court, or the particularities relating to the organisation or cost of the two legal professions which serve the common law systems on these islands. This was a point also touched upon by Minister Humphreys in her opening address.

My role is perhaps different to that of other keynote speakers as I intervene not from a domestic perspective but from the perspective of someone who has worked in European law for many decades. Starting with the *Airey* judgment and moving forward I hope, with reference to the development of ECHR and EU law, to feed into your conversation on how to shape Irish law on access to justice for the future; while of course fully observing the limits of what a sitting judge can say.

II – *Airey v. Ireland*: forerunners and legacy in Strasbourg and beyond

The *Airey* judgment is now over 42 years old.

While excluding the existence of a right under Article 6 § 1 of the Convention to free legal aid in all civil cases, the Court held that an individual should enjoy an *effective* right of access to the courts in conditions not at variance with Article 6 § 1.

(i) Access to justice from *Golder* to *Airey*

The *Airey* judgment was itself the consequence of the Strasbourg court's previous finding on access to court four years prior in *Golder v. the United Kingdom*.[9]

[7] [1986] IEHC 41.
[8] [2009] IEHC 276. These cases are cited as examples because of the role the community law movement played in bringing them. See further https://www.lawsociety.ie/gazette/in-depth/community-law.

[9] *Golder v. the United Kingdom*, no. 4451/70, 21 February 1975. The applicant in that case was a serving prisoner who had been wrongly accused of participation in a prison riot and who had been denied by the Home Secretary the right to consult with a solicitor about proposed civil action he wished

Article 6 § 1 ECHR does not *expressly* provide for a right of access to courts or tribunals. However, in *Golder* the Strasbourg court held that the express rights to fair, public and expeditious proceedings under Article 6 would have no value if there were no access to courts and therefore no such proceedings to begin with.

As many of you will recall, when she introduced her Strasbourg application in 1973 Johanna Airey complained that, due to the prohibitive cost of the proceedings in the High Court,[10] she could not obtain a judicial separation.[11] Crucially – thinking of the Chief Justice's identification in the concept paper of formal and practical obstacles to access – the Strasbourg Court established the following key legal principles:

- hindrance in fact contravenes the Convention in the same way as a legal impediment.

- fulfilment of a duty under the Convention can, on occasion, necessitate some positive action on the part of the State.

By five votes to two, with the then Irish judge dissenting, the Court held in the *Airey* case that Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain States for various types of litigation, or because of the complexity of the procedure or the case. It was not, the Court stressed, its function to indicate, let alone dictate, which measures should be taken to comply with the State's positive obligations. The institution of a legal aid scheme was mentioned as one possibility; a simplification of procedure was another.

The consequences of the *Airey* judgment in Irish law were immediate, with the establishment of the Civil Legal Aid Scheme, a Legal Aid Board and Law Centres.[12] The merits and demerits of the system which has operated ever since are well known to a domestic audience and will be discussed today and tomorrow by other conference delegates who are better qualified to develop on them further.[13]

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to bring against the prison officer who implicated him in wrongdoing. The ECtHR found that the Home Secretary, by refusing the applicant's request to consult with a lawyer, had prevented him from bringing legal proceedings and violated his rights under Article 6 § 1 ECHR.

[10] Ranging at the time from IR £500-700 for an uncontested application to IR £800-1,200 for a contested one.

[11] The Commission had found unanimously in her favour in 1978 that the failure of the State to ensure the applicant's effective access to court to enable her to obtain a judicial separation amounted to a breach of Article 6 § 1 of the Convention.

[12] Not least because the recommendations of the Pringle report on the provision of legal aid and advice in civil cases had been published in 1977 and because, during the course of the Strasbourg proceedings, the Government had indicated its intention to change the law. See the submissions of the respondent Government at § 11 of the judgment in *Airey*. On the Pringle report and the work of FLAC at that time see further G. Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland*, IPA, 2002.

[13] See the reports by FLAC, "Accessing Justice in Hard Times", January 2016, accessible at https://www.flac.ie/assets/files/pdf/flac_accessing_justice_in_hard_times_from_printwell.pdf (last

Fast forward from the early Strasbourg case-law on Article 6 and Mr. Justice Kelly's review of the administration of civil justice has sought amongst other things to tackle questions of simplification of procedure, outdated and excessively complex procedural rules. These issues had been flagged by the Strasbourg court as possible hindrances over 42 years ago.

(ii) Access to justice, legal aid and court fees beyond *Airey*

What does the post-*Airey* Strasbourg case-law tell us about access to justice generally and the existence and nature of a right to legal aid in particular?[14]

The ECtHR has reiterated on numerous occasions that the right of access to court under Article 6 ECHR is not absolute. Whether and when Article 6 implies a requirement to provide legal aid will depend, among other factors, on:

- the importance of what is at stake for the applicant,[15] taking into account the vulnerability of the applicant;[16]

- the emotional involvement of the applicant which may impede the degree of objectivity required by advocacy in court;[17]

- the complexity of the relevant law or procedure;[18]

- the need to establish facts through expert evidence and the examination of witnesses;[19]

- the applicant's capacity to represent him or herself effectively,[20] and

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accessed 9 October 2019); FLAC, "Civil Legal Aid in Ireland: Forty Years On", April 2009, accessible at https://www.flac.ie/assets/files/pdf/cla_in_ireland_40_years_on_final.pdf (last accessed 9 October 2019). See also, on the Irish situation, Judge MacMenamin, "Access to Justice", Brian Lenihan Memorial Lecture, 2020, where he pointed out that in some courts up to one third of all cases are ones where one side have no lawyers at all, and cannot afford lawyers. See also, more broadly, The Hague Institute for Innovation of Law, "Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?", 21 February 2014, p. 87, available at https://www.hiil.org/wp-content/uploads/2018/08/Report_legal_aid_in_Europe.pdf (last accessed 9 October 2019).

[14] An overview is provided in the ECtHR case-law guide on Article 6 (civil limb) ECHR (ECtHR Guide on Article 6 of the European Convention on Human Rights, "Right to a fair trial (civil limb)", available at https://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf (updated on 30 April 2019; last accessed 9 October 2019)) and in the Handbook on European Law relating to Access to Justice published in 2016 by the EU Fundamental Rights Agency in conjunction with the ECtHR.

[15] *Steel and Morris v. the United Kingdom*, no. 68416/01, 15 February 2005, § 61, and *P., C. and S. v. the United Kingdom*, no. 56547/00, 16 July 2002, §§ 91, 95 and 100.

[16] *Nenov v. Bulgaria*, no. 33738/02, 16 July 2009, § 52.

[17] *Airey v. Ireland*, cited above, § 24.

[18] *Airey v. Ireland*, cited above, §§ 24 and 26; *P., C. and S. v. the United Kingdom*, cited above, § 89.

[19] *Airey v. Ireland*, cited above, § 24.

[20] *McVicar v. the United Kingdom*, no. 46311/99, 7 May 2002, §§ 48-62, and *Steel and Morris v. the United Kingdom*, cited above, § 61.

- the existence of a statutory requirement to have legal representation.[21]

The fact that the Convention right in question is not absolute means that it may be permissible to impose conditions on the grant of legal aid based on considerations relating to the financial situation of the litigant[22] or his or her prospects of success in the proceedings.[23]

Legal aid schemes which select the cases which qualify for legal aid are considered justifiable, provided that they offer individuals substantial guarantees to protect them from arbitrariness.[24] In *Airey*, as I just indicated, the Court had emphasised that it was not for an international court to decide how a State should respond to its obligations under Article 6 § 1 of the Convention. However, the ECtHR will look when required at the *quality* of a legal aid scheme[25] and verify whether the method chosen by the authorities is compatible with the Convention.[26] In one case, even though under domestic procedural law the competent national court was not obliged to give any reasons for refusing legal aid, the Court held that the "principle of fairness" required it to do so.[27]

There will only be a violation of Article 6 where the "very essence of the right" of access is impaired. In a UK case, *P., C. and S.*, involving childcare proceedings, the Court acknowledged that:

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[21] *Airey v. Ireland*, cited above, § 26; *Gnahoré v. France*, no. 40031/98, 19 September 2000, § 41 *in fine*.

[22] *Steel and Morris v. the United Kingdom*, cited above, § 62, and *Munro v. the United Kingdom*, no. 10594/83, Commission decision of 14 July 1987, DR 52, pp. 158-176, pp. 164 and 165.

[23] *Steel and Morris v. the United Kingdom*, cited above, § 62. See, however, *Aerts v. Belgium*, no. 25357/94, 30 July 1998, where the Court held that refusing legal aid on the ground that an appeal did not, at the time of application, appear to be well-founded may in some circumstances impair the very essence of an applicant's right to a tribunal (§ 60). The case concerned the rejection of the applicant's request to the Legal Aid Board of the Court of Cassation in order to appeal a judgment which confirmed the applicant's pre-trial detention in a psychiatric prison wing. The Legal Aid Board justified the refusal of the legal aid request on the grounds that the appeal did not at that time appear well-founded. According to the ECtHR, however, "[i]t was not for the Legal Aid Board to assess the proposed appeal's prospects of success; it was for the Court of Cassation to determine the issue" (§ 60). Following this decision, Belgium amended the law to restrict legal aid refusals to manifestly unfounded applications.

[24] See *Gnahoré v. France*, cited above, § 41; *Essaadi v. France*, no. 49384/99, 26 February 2002, § 36; *Del Sol v. France*, no. 46800/99, 26 February 2002, § 26; *Bakan v. Turkey*, no. 50939/99, 12 June 2007, §§ 75-76 with a reference to the judgment in *Aerts v. Belgium*, no. 25357/94, 30 July 1998, § 60.

[25] *Essaadi v. France*, cited above, § 35; *Del Sol v. France*, cited above, § 25.

[26] *Santambrogio v. Italy*, no. 61945/00, 21 September 2004, § 52; *Bakan v. Turkey*, cited above, §§ 74-78, and *Pedro Ramos v. Switzerland*, no. 10111/06, 14 October 2010, §§ 41-45.

[27] *Tabor v. Poland*, no. 12825/02, 27 June 2006, §§ 45-46. On the principle of fairness see *P., C. and S. v. the United Kingdom*, cited above, § 91: "[t]he key principle governing the application of Article 6 is fairness. In cases where an applicant appears in court notwithstanding lack of assistance by a lawyer and manages to conduct his or her case in the teeth of all the difficulties, the question may nonetheless arise as to whether this procedure was fair […]. There is the importance of ensuring the appearance of the fair administration of justice and a party in civil proceedings must be able to participate effectively, inter alia, by being able to put forward the matters in support of his or her claims. Here, as in other aspects of Article 6, the seriousness of what is at stake for the applicant will be of relevance to assessing the adequacy and fairness of the procedures".

> "[…] although the pursuit of proceedings as a litigant in person may on occasion not be an easy matter, the limited public funds available for civil actions renders a procedure of selection a necessary feature of the system of administration of justice".[28]

According to the ECtHR, that difficult selection procedure falls to the State, and will not raise a difficulty with reference to the Convention provided they do not act arbitrarily or disproportionately.[29] The question in *Anghel v. Italy* was the extent to which the State could be held responsible for the *quality* of the legal assistance provided under the legal aid scheme it had established. As a general principle, and given the independence of the legal profession from the State, the Court pointed out that the conduct of a case is essentially a matter between the defendant and his or her counsel, whether counsel be appointed under a legal aid scheme or be privately financed. It cannot, as such, other than in special circumstances, incur the State's liability under the Convention. In *Anghel*, although legal aid lawyers had been provided, they had offered erroneous advice and their error had not been remedied by the domestic authorities, resulting in a lack of practical and effective representation. In *Shamoyan v. Armenia* the ECtHR was receptive to the applicant's argument that, in light of her difficult financial situation, the absence both of legal aid and of evidence that counsel may be willing to act *pro bono*, the Government's non-exhaustion objection should be dismissed.[30]

It is worth pausing and reflecting on what the absence of effective access at national level may entail in terms of the broader Convention system. The latter is predicated on the protection of fundamental rights by national courts, with the Strasbourg court merely acting as a safety net.[31] As my United Kingdom colleague, Tim Eicke, has observed, cases like *Shamoyan* highlight the risk that practical as well as formal barriers to access to justice at national level, whether or not they are found to violate Article 6 § 1 ECHR, could increase the likelihood that non-exhaustion objections will be rejected by the ECtHR. This in turn would mean the principle of subsidiarity would be undermined, "leaving the Strasbourg Court in the unattractive situation of having to act as a first instance court; deprived of the benefit of the … detailed and careful consideration of the issues by the national court(s)".[32]

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[28] *P., C. and S. v. the United Kingdom*, cited above, § 90.

[29] In *P., C. and S.*, in view of the exceptional complexity of the proceedings, the importance of what was at stake and the highly emotive nature of the subject matter, the principles of effective access to court and fairness required that the applicant receive the assistance of a lawyer.

[30] *Shamoyan v. Armenia*, no. 18499/08, 7 July 2015, §§ 35-36 (emphasis added).

[31] See R. Spano, « The Future of the European Court of Human Rights – Towards Process-Based Review ? », Middlesex University School of Law, 6 October 2017 and « Universality or Diversity of Human Rights ? Strasbourg in the age of subsidiarity » (2014) 14 *HRLRev.* 487 – 502.

[32] See the explanations provided in a speech on access to justice he delivered at the ALBA annual lecture 2017, subsequently published in (2018) *European Human Rights Law Review* 22 – 32.

Other obstacles to access to court may be created either by the actual costs incurred in the course of litigating before the domestic courts or the deterrent effect likely or possible which cost exposure may have on applicants. This issue has been considered by the UKSC in *Coventry et al v. Lawrence et al*. By a majority of five to two it held in 2015 that the system for the recovery of costs in civil litigation in England and Wales under the Access to Justice Act 1999 (AJA) is compatible with Article 6 ECHR. The AJA regime deliberately imposed the costs of all conditional fee agreement (CFA) litigation on unsuccessful defendants as a class. Instead of placing a burden on the legal aid fund, legal proceedings were to be funded by a party's lawyers (who would undertake the work "on risk" in exchange for a potential success fee). If the proceedings were successful, the burden of the success fee would be transferred to the losing party. The AJA had already been examined by the ECtHR in *MGN v. the United Kingdom*, where the Strasbourg court had identified several flaws in the scheme and found that it was incompatible with Article 10 ECHR.[33] That judgment had concerned, however, the balancing of the rights guaranteed by Article 10, to which special significance had always been attributed, with Article 6 rights. In *Coventry et al* the UKSC majority stated that the Article 6 question before them was not whether the AJA regime had flaws; it was rather whether it was a proportionate way of achieving the legitimate aim it pursued, namely providing the widest public access to legal services for civil litigation funded by the private sector. The UKSC gave considerable weight to informed legislative choices in circumstances where state authorities are seeking to reconcile the competing interests of different groups in society.[34] It held that there is a powerful argument that the 1999 Act scheme is compatible with the Convention simply because it is a general measure which

> (i) was justified by the need to widen access to justice to litigants following the withdrawal of legal aid;
>
> (ii) was enacted following wide consultation, and
>
> (iii) fell within the wide area of discretionary judgment of the legislature and rule-makers.

[33] *MGN Limited v. the United Kingdom*, no. 39401/04, 18 January 2011, §§ 192-220.

[34] This is, of course, in line with the ECtHR's own approach in relationship to general legislative measures, proportionality and the margin of appreciation. See, for example, *Animal Defenders International v. the United Kingdom*, no. 48876/08, 22 April 2013, §§ 108-110: "It emerges from that case-law that, in order to determine the proportionality of a general measure, the Court must primarily assess the legislative choices underlying it […]. The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation […]. […] the more convincing the general justifications for the general measure are, the less importance the Court will attach to its impact in the particular case. […] The central question as regards such measures is not […] whether less restrictive rules should have been adopted or, indeed, whether the State could prove that, without the prohibition, the legitimate aim would not be achieved. Rather the core issue is whether, in adopting the general measure and striking the balance it did, the legislature acted within the margin of appreciation afforded to it […]." See also *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, no. 931/13, 27 June 2017, §§ 192 and 195, and *Garib v. the Netherlands*, no. 43494/09, 6 November 2017, § 138.

The scheme as a whole was considered by the majority to be a rational and coherent means to provide access to justice. This and another UK case touching on a similar issue subsequently made their way to Strasbourg.[35] One of the two cases has already been rejected for non-exhaustion reasons;[36] *Coventry* is still pending.

Both U.K. cases remind us of the door opened by Joanna Airey and the distance travelled since. Many violations of Article 6 of the Convention have been found since the Irish judgment, with the ECtHR on occasion looking into the quality of a contested legal aid scheme and relying on principles of fairness. However, as you well know, in its protection of essentially civil and political rights the Strasbourg court treads carefully when it comes to the social and economic consequences of its decision or when its decisions engage with highly technical areas of national law, themselves the product of national social and economic policy choices. As emphasised in the U.K. case I cited earlier, *P., C. and S.*, the limited public funds available for civil actions may render a procedure of selection a justified feature of the system of administration of justice. And this may be the Achilles heel for those who seek further or far-reaching developments at Strasbourg level. I'll return to this point later.

III – EU law, the EU Charter and legal Aid

Turning to EU law, what grounds, if any, does the latter provide to those seeking to redress access to justice problems in their national systems? Well before the 2009 Treaty of Lisbon and EU Charter, the CJEU had recognised the principle of effective judicial protection as a general principle of EU law, stemming from the constitutional traditions common to the Member States and from Articles 6 and 13 ECHR.[37] This principle is now reaffirmed by Article 47 § 1 of the EU Charter which provides that:

> "[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal".

In addition, Article 47 § 3 of the EU Charter provides that:

> "[l]egal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".

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[35] See *Coventry et al v. the United Kingdom*, no. 6016/16, communicated in May 2017, a case brought by the domestic respondents. See also *Austin v. the United Kingdom*, no. 39714/15, communicated in June 2016 which concerned the alleged failure by the respondent State to protect the applicant from the actions of her domestic adversary by enabling her to bring a private nuisance claim without incurring a significant costs' risk, the domestic courts having rejected her application for a protective costs order.
[36] In a decision of 12 September 2017, a Committee of three judges rejected the *Austin* application on the grounds that the applicant had only raised her Convention arguments belatedly before the UKSC (albeit, it should be noted, only after that same court had handed down its decision in *Coventry*).
[37] C-222/84, *Marguerite Johnston v. Chief Constable of the Royal Ulster Constabulary*, EU:C:1986:206, § 18. See also C-222/86, *Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v. Georges Heylens*, EU:C:1987:442.

The explanations which accompany the EU Charter and which are used by the CJEU as an aid to interpretation refer expressly to *Airey* in support of this.[38]

In addition to Article 47 of the EU Charter it should be remembered that EU Member States have always enjoyed a degree of autonomy in relation to the detailed procedural rules at national level governing actions for safeguarding an individual's rights under EU law. However, according to well-established CJEU case-law, those rules must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness).[39] These principles are often treated as the concrete embodiment of effective judicial protection at domestic level and they are relied on frequently by the CJEU.[40]

Before looking at how EU law, the EU Charter and the CJEU are now approaching questions relating to effective judicial protection, access to court and legal aid, it is important to remember the central place accorded the preliminary reference procedure in the EU legal order. The EU judicial system as conceived by the EU Treaties and as interpreted by the CJEU has "as its keystone the preliminary ruling procedure provided for in Article 267 TFEU".[41] While responsibility for ensuring observance of the law in the interpretation and application of the Treaties falls to both Union and national courts, restrictive rules on standing for individuals before Union courts[42] mean that, in reality, the EU is largely dependent on national courts to ensure respect for the principle of effective judicial protection. It is through national courts and via the preliminary reference procedure that the observance of EU law is primarily guaranteed.[43] As a

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[38] C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik*, EU:C:2010:811, § 36. According to the explanations, in all respects other than their scope, the guarantees afforded by Article 6 § 1 ECHR apply in a similar way to the EU.

[39] See, originally, C-33/76, *Rewe-Zentralfinanz eG und Rewe-Zentral AG v. Landwirtschaftskammer für das Saarland*, EU:C:1976:188. For an Irish preliminary reference on the principle of effectiveness, see C-268/06, *Impact v. Minister for Agriculture and Food and Others*, EU:C:2008:223.

[40] Legal commentators have noted the "fractious" case-law relating to the principle of effective judicial protection reaffirmed in Article 47 of the EU Charter, which accommodates both the *Johnston* and *Rewe* lines of case-law (see, for example, A. Ward, "Article 47: Evaluation" in S. Peers et al, *The EU Charter of Fundamental Rights: A Commentary*, 2014, pp.1273-1275, p. 1273, para. 47.247, or S. Prechal and R. Widdershoven, "Redefining the Relationship between 'Rewe-effectiveness' and Effective Judicial Protection" (2012) *Review of European Administrative Law*, p. 39: "In practice it is not easy to predict which line the Court will follow in any specific case: the relatively mild *Rewe* line or the more stringent one of effective judicial protection. In some cases, only the *Rewe* principles are applied, in others they feature alongside the principle of effective judicial protection, again in other cases effective judicial protections seems to take over from the principle of effectiveness.").

[41] See C-619/18, *Commission v. Poland*, EU:C:2019:531, § 45, or Opinion 2/13, EU:C:2014 :2545, § 176. In early October 2019 the Commission introduced a new infringement action against Poland in relation to a new disciplinary regime which allows judges to be subjected to disciplinary investigations, procedures and sanctions on the basis of the content of their decisions, including the exercise of their right to refer under Article 267 TFEU. Several CJEU judgments have since followed in which the principle on the organization of the judiciary has been reiterated.

[42] See, for an overview, C-583/11 P, *Inuit Tapiriit Kanatami and Others v. Parliament and Council*, EU:C:2013:625.

[43] See further on judicial remedies in EU law A. Arnull and D. Chalmers, *The Oxford Handbook of European Union Law*, OUP, 2015, pp. 376-402.

union based on the rule of law, the EU requires that individuals have the right to challenge before the courts the legality of any decision or other national measure concerning the application to them of an EU "act".[44]

For the purpose of our discussion, this raises an important question – if national courts are the fora in which to ensure EU law is correctly interpreted and applied, how do you ensure effective access to national courts in the first place?

Post-Lisbon, some EU law cases stand out in terms of access to justice and a right to legal aid, not least *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH v. Bundesrepublik Deutschland*. The judgment in *DEB* was delivered in December 2010, just over a year after the EU Charter had acquired the same legal status as the Treaties by virtue of Article 6 § 1 TEU. DEB, a German company, wished to bring an action for damages before the German courts against the German State, in order to obtain *Francovich*-type State liability damages as a result of that State's delay in the transposition of a directive which concerned common rules for the internal market in natural gas. The CJEU was asked whether the fact that a legal person is unable, under national law, to qualify for legal aid renders the exercise of its rights impossible in practice. Given this national rule, a legal person risked not being able to gain access to a court to bring its damages action because it would be impossible for it to make the advance payment in respect of the cost of proceedings and to obtain the assistance of a lawyer. German law limited the grant of legal aid to a legal person unable to make the advance payment in respect of costs by requiring compliance with very stringent conditions.[45]

On the question referred, the CJEU held, first, after a more extensive than usual review of ECtHR case-law, that the grant of legal aid to legal persons is not in principle impossible pursuant to the principle of effective judicial protection. Next, the Luxembourg Court explained that it is for the national court to ascertain:

- First, whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which is liable to undermine the very core of that right;

- Second, whether those conditions pursue a legitimate aim, and

[44] *Commission v. Poland*, cited above, § 46.

[45] It is worth noting, as an aside, that *DEB* seems to constitute the first clear declaration by the CJEU of its intention to frame cases in terms of the EU Charter and no longer in terms of the general principles of EU law recognized by Article 6 § 3 TEU, or of the common constitutional principles and articles of the ECHR on which those general principles, and indeed the EU Charter, are based. See *DEB*, cited above, §§ 29-33. See, in the same vein, Advocate General Bot in C-93/12, *ET Agrokonsulting-04-Velko Stoyanov v. Izpalnitelen direktor na Darzhaven fond 'Zemedelie'*, EU:C:2013:172, § 32.

- Finally, whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.[46]

The CJEU in *DEB* also detailed the factors that a national court may take into account; and again the factors to be considered will be very familiar to Strasbourg observers. It indicated that the national court must look at:

- the importance of what is at stake,

- the complexity of the applicable law and procedure and,

- with regard specifically to legal persons, their form and whether they are profit-making or non-profit-making as well as the financial capacity of the partners or shareholders.

The particular difficulties encountered under national law by legal aid claimants which are companies relying on EU rights were noted by the CJEU. According to the latter:

> "[…] it is for [national] courts to strike a fair balance in order to ensure that applicants relying on EU law have access to the courts, *but without favouring such applicants over others*."[47]

In a later case – *Commission v. France* – on whether a reduced VAT rate provided by French law for lawyers was EU VAT compatible, the Advocate General noted:

> "the objective of promoting access to justice and the law in general for persons with insufficient resources is in accordance with the *fundamental values of the system of judicial protection prevailing within the European Union*".[48]

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[46] *DEB*, cited above, §§ 60-61. See also Joined Cases C-439/14 and C-488/14, *SC Star Storage SA and Others v. Institutul Naţional de Cercetare-Dezvoltare în Informatică (ICI) and Others*, EU:C:2016:688, § 55.

[47] *DEB*, cited above, § 56 (emphasis added). Subsequent to its judgment in *DEB*, the CJEU reiterated its stance on legal aid and legal persons in an order given in the case of *GREP* (C-156/12, *GREP GmbH v. Freistaat Bayern*, EU:C:2012:342). The latter concerned a cross-border situation in which an order for enforcement issued by a German court was declared enforceable in accordance with the Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation (EC) 44/2001 of the Council, of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12/1. See further L. Holopainen, "Article 47 (3)", in S. Peers et al, cited above, pp. 1269-1272, p. 1271, para. 47.239). GREP was the subject of the enforcement order, but could not get legal aid under Austrian law as legal persons were not entitled to legal aid in enforcement proceedings. The CJEU ruled that the case fell within the scope of EU law because it concerned the application of rules in an EU regulation and thus the implementation of EU law for the purposes of Article 51 of the Charter (*GREP GmbH*, cited above, § 31). The operative part of the order in *GREP* reproduces the operative part of the judgment in *DEB*.

[48] Ibid, § 24 (emphasis added). Note that EU secondary law provides for legal aid in certain circumstances: see Council Directive 2002/8/EC, of 27 January 2003, to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, OJ L 26/41, or, in the asylum context: Council Directive 2005/85/EC, of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13

It's also worth remembering that in the EU context, a specific model to keep costs low and facilitate access has developed in the environmental field, pursuant to the Aarhus Convention and EU directives adopted thereunder. Those rules require review procedures for environmental claims to be fair, equitable, timely and not prohibitively expensive. In the UK in his 2017 supplemental review on civil litigation costs Lord Justice Jackson proposed extending claimant friendly rules which apply to environmental claims to all judicial review claims. I note the environmental panel chaired by Professor Áine Ryall and wonder what lessons or pointers they might have of use in other fields.

Returning to the general principles of EU law, in the case-law of the CJEU the right to or principle of effective judicial protection has become inextricably linked in recent years with the more general principle of EU law effectiveness. This leads us to Article 19 § 1 TEU. This article provides that:

> "The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the Treaties the law is observed.
>
> Member States shall provide remedies sufficient to ensure effective legal protection *in the fields covered by Union law*." (emphasis added)

The importance of this Treaty article resides in the second sentence on effective remedies. According to the President of the CJEU, this provision ensures that the substantive rights which EU law confers on individuals do not become "an empty promise".[49] By virtue of that principle, in the absence of EU measures harmonising national rules of procedure, it is for the Member States to ensure the *full effect* of EU law.[50]

In a series of recent cases which many of you will know involving first Portuguese judges and subsequently and more frequently the recent reforms of the Polish judiciary, as well as the well-known *Celmer* case on execution in Ireland of EAWs, the CJEU has transformed Article 19 § 1 TEU into a "judicially enforceable rule of law

(Asylum Procedures Directive), Articles 10 and 15; Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180/60 (Recast Procedures Directive), Articles 8, 12, 20 and 21; and Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180/31.

[49] K. Lenaerts and J. A. Gutiérrez-Fons, "The Place of the Charter in the EU Constitutional Edifice", in S. Peers et al, cited above,, pp. 1559-1593, p. 1565, para. 55.19.

[50] Idem.

clause."[51] This provision gives concrete expression to the value of the rule of law enshrined in Article 2 TEU.[52]

Article 19 § 1 TEU bolsters and supplements Article 47 of the EU Charter but also, to some extent, supplants it. The reason for this is that the latter applies within the narrower – albeit still broad – scope of EU law; whereas Article 19 § 1 TEU applies in all the *fields covered by EU* law. Article 47 of the EU Charter provides effective judicial protection only when individuals seek to take advantage of specific EU provisions. Those provisions constitute the link or connection which brings an applicant's case within the scope of application of EU law. Article 19 § 1 TEU applies more broadly to courts and procedures which function within the fields covered by EU law and its potential effects for a national judicial system may therefore be much broader.[53]

In the infringement action involving Polish judges decided in June 2019, this became clear. Rejecting Poland's arguments to the effect that organisation of the justice system was a national and not an EU competence, the CJEU held:

> "although […] *the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law* […] and, in particular, from the second subparagraph of Article 19(1) TEU […].".[54]

In addition, via Article 19 § 1 TEU, the principle of effectiveness, born of Member States' procedural *autonomy*, is interpreted by the CJEU as giving rise to *obligations*, and potentially far-reaching ones, regarding access to justice, fair procedures and judicial independence:

Of course it could be argued that the CJEU rule of law cases to which I have just referred are concerned principally if not exclusively with such questions of judicial independence. However:

- the central reliance placed by the CJEU on Article 19 § 1 TEU,

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[51] See in this order, C-64/16, *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117; C-216/18 PPU, *Minister for Justice and Equality (Systemic deficiencies in the judicial system)*, EU:C:2018:586; C-619/18 R, *Commission v. Poland*, EU:C:2018:1021, and C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, EU:C:2019:531. For a commentary on the Portuguese judges' case and the potential of Article 19 § 1 TEU see M. Krajewski, "*Associação Sindical dos Juízes Portugueses: The Court of Justice and Athena's dilemma*" (2018) 3 *European Papers*, available at http://www.europeanpapers.eu/en/europeanforum/associacao-sindical-dos-juizes-portugueses-court-of-justice-and-athena-dilemma (last accessed 14 October 2019).

[52] *Associação Sindical dos Juízes Portugueses*, cited above, § 32.

[53] See further Joined Cases C-585/15, C-624/18 and C-625/18 *A.K.* and others, EU:C:2019:982, §§ 78 – 84, on the difference between the scope of the EU Charter and the applicability of Article 19 § A TEU to courts which may be called on to rule on questions relating to the application or interpretation of EU law.

[54] C-619/18, *Commission v. Poland (Independence of the Supreme Court)*, cited above, § 52.

- the broader scope now given to that manifestation of the principle of effective judicial protection and,

- the terms of the CJEU's judgments

make it possible, if not likely, that broader questions relating to organisation and procedure in Member States' judicial systems will fall within the remit of Article 19 § 1 TEU in future.

This also brings us back to the preliminary reference procedure as the keystone of the EU's legal order. For that procedure to fulfil its key function individuals have to have access to courts. As I suggested at the FLAC conference in 2019, the following question surely arises – does Article 19 § 1 TEU combined with Article 47 § 3 of the EU Charter now provide individuals with fertile ground in a wide variety of circumstances and in fields covered by EU law to argue that in the absence of legal aid that access is disproportionately or unfairly restricted?

A final note on actual and potential differences between the ECHR and EU law in relation to legal aid brings us back to the characterisation of the right to legal aid and consideration by European courts of the economic consequences of granting it.

In *Airey v. Ireland* we see the ECtHR broaching it as a qualified right, stemming from States' positive obligations, with implications of a social or economic nature. In that 1979 judgment the Strasbourg court stated that:

> "The Court is aware that the further realisation of social and economic rights is largely dependent on the situation – notably financial – reigning in the State in question."[55]

As I explained earlier, in terms of financial means tests, the ECtHR has said that there will be no violation of Article 6 § 1 if an applicant falls outside the legal aid scheme because his or her income exceeds the financial criteria, provided of course the essence of the right of access to a court is not impaired.[56] States are not obliged to spend public funds to ensure total equality of arms between the assisted person and the opposing party, as long as, according to the Court in *Steel and Morris v. the United Kingdom*:

> "[…] each side is afforded a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis the adversary".[57]

[55] *Airey v. Ireland*, cited above, § 26.
[56] *Glaser v. the United Kingdom*, no. 32346/96, 19 September 2000, § 99, and *Santambrogio v. Italy*, cited above, §§ 53 and 58.
[57] *Steel and Morris v. the United Kingdom*, cited above, § 62.

The Strasbourg court, which has to interpret a Convention which applies to 47 very different High Contracting Parties, has consistently recognised the limited public funds which may be available to support civil actions and has sought to work with such limitations while ensuring effective (and fair) access across those 47 very different States.

In contrast, the legal aid provision of the EU Charter reflects a procedural principle or right and now, given the recent interpretation of Article 19 § 1 TEU, it is directly or indirectly linked to the Article 2 TEU *value* of the rule of law.[58] In *DEB*, the CJEU pointed out that Article 47 is to be found under Title VI of the Charter relating to justice together with other procedural principles, and not under Title IV relating to solidarity, which is where most socio-economic Charter principles are congregated.[59]

It remains to be seen whether classification as a procedural principle, and harnessing the powerful EU principle of effectiveness in relation to it, might make the right to legal aid in an EU context less susceptible to arguments concerning budgetary restraints.[60]

IV - Conclusions

The *Golder* and *Airey* judgments on the right of access to court and the positive obligation on States to provide recourse to legal aid in certain civil cases are rightly regarded as ground-breaking judgments from the Strasbourg court.

For the law to develop one needs not only independent and impartial courts established in accordance with law, but also litigants willing and able to challenge and, where necessary, seek to extend or limit the law's boundaries. The "Aireys" of this world.

To register as a right an entitlement must be capable of actually being exercised and enjoyed.[61] The reality is that if meritorious cases are not being brought nationally or at European level for fear of financial – and indeed financially ruinous consequences (consider the cost of standard or more complex judicial review) – then the "organisation of justice" in the broad sense – to borrow the terminology of the CJEU – may be in need of closer attention.

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[58] See L. Holopainen, "Article 47 (3)", in S. Peers et al, cited above, pp. 1269-1272, p. 1272, para. 47.241.
[59] *DEB*, cited above, §§ 40-41.
[60] See L. Holopainen, "Article 47 (3)", in S. Peers et al, cited above, pp. 1269-1272, p. 1272, para. 47.241.
[61] See T. Hickman, "Public Law's Disgrace" (parts 1 and 2) at https://ukconstitutionallaw.org/2017/02/09/tom-hickman-public-laws-disgrace/ making a point in the U.K. context which clearly also underpins the ECtHR access to justice case-law since *Golder*. See further *Bertuzzi v. France*, n° 36378/97, § 24, 13 February 2003 and *Kreuz v. Poland*, n° 28249/95, § 52, 19 June 2001 on the ECtHR's "practical and effective" rights doctrine.

The Strasbourg court has proceeded at times boldly but overall carefully in weeding out restrictions which, in effect, impair the very essence of a party's right of access to court. It has proceeded in a fact sensitive manner in individual cases while laying down general principles which States must adhere to in their national systems, thereby embedding Convention principles in the 47 national systems to which it applies. The roadmap laid down in *Airey* was both remarkably clever and flexible.

The CJEU's approach in the recent rule of law cases, where potential interference as a result of the manner in which a State has organised its justice system with EU values and the principle of effectiveness have been the basis for the EU's legal responses, points to the possibility of a more systemic engagement with access and legal aid questions in the future.

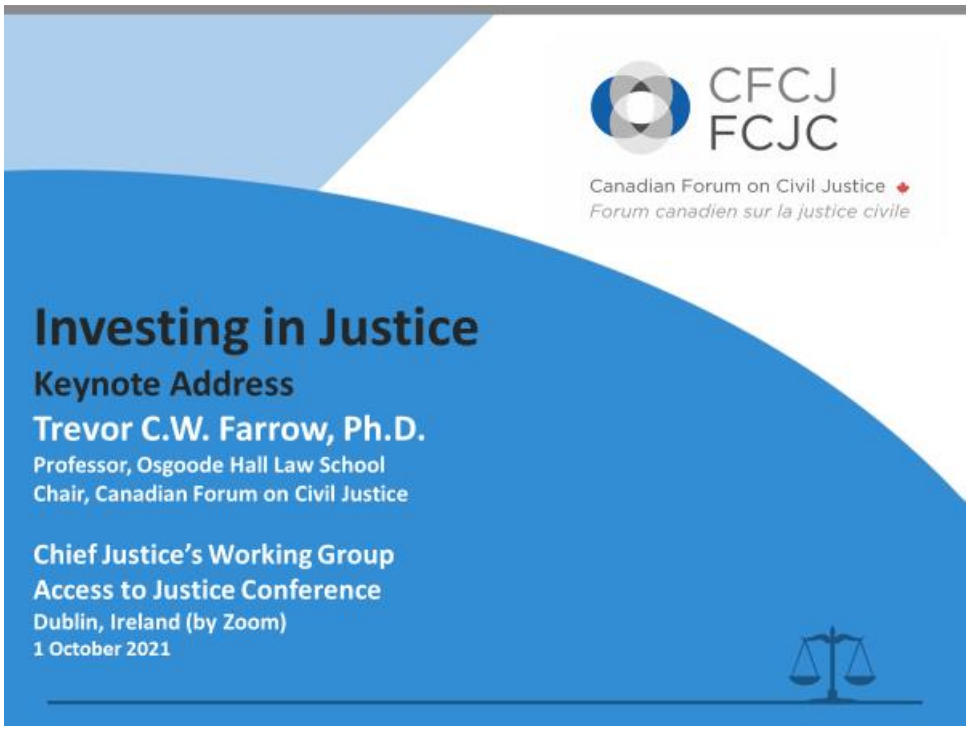
However, both as regards the ECHR and EU law, domestic courts and national legal systems remain the essential locus for the protection and enforcement of human rights either because of the subsidiarity which underpins the Strasbourg system or the principles of direct effect and supremacy which transform national judges into EU judges.

The further access to justice potential of both European systems will, in due course, be tested by national courts and litigants. How and when they do so will to a large extent be determined by their national access to justice.

Minister for Justice, Heather Humphreys TD, delivering her keynote address on the opening day of the Chief Justice's Working Group Conference on Access to Justice.

***Investing in Justice* - Trevor C. W Farrow, Professor at Osgoode Hall Law School and Chair of the Canadian Forum on Civil Justice**

Professor Trevor C.W. Farrow
Osgoode Hall Law School



Outline: 3 Questions

1. What is at Stake (or Why Should We Care)?
2. Justice Funding: Is it a Priority?
3. Investing in Justice: Does it Make Sense?

1. What is at Stake (or Why Should We Care)?

Justice for All

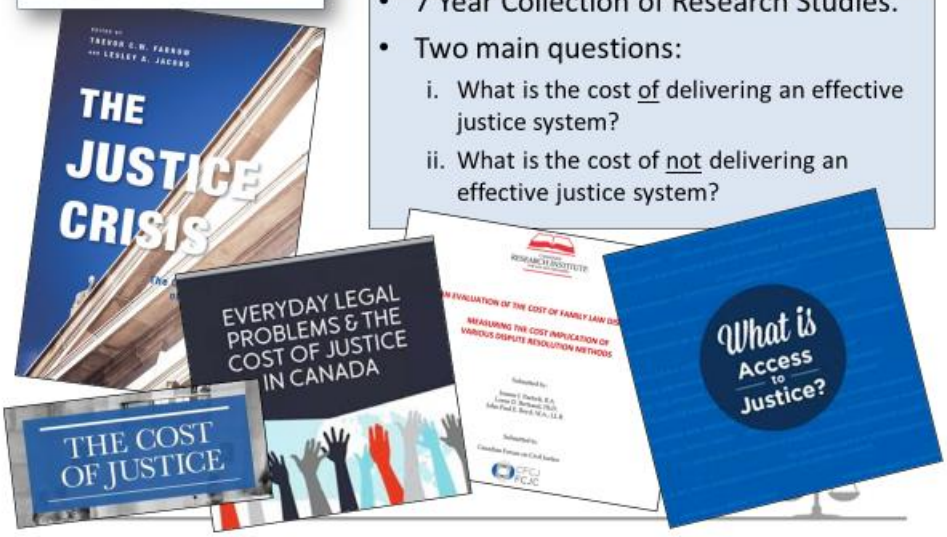
Report of the Task Force on Justice

"5.1 billion people – two-thirds of the world's population – lack meaningful access to justice."

What Are People Saying?

Canadian Forum on Civil Justice "Cost of Justice" Project

- 7 Year Collection of Research Studies.
- Two main questions:
  i. What is the cost <u>of</u> delivering an effective justice system?
  ii. What is the cost of <u>not</u> delivering an effective justice system?



"Everyday Legal Problems"

2016 Legal Needs Study

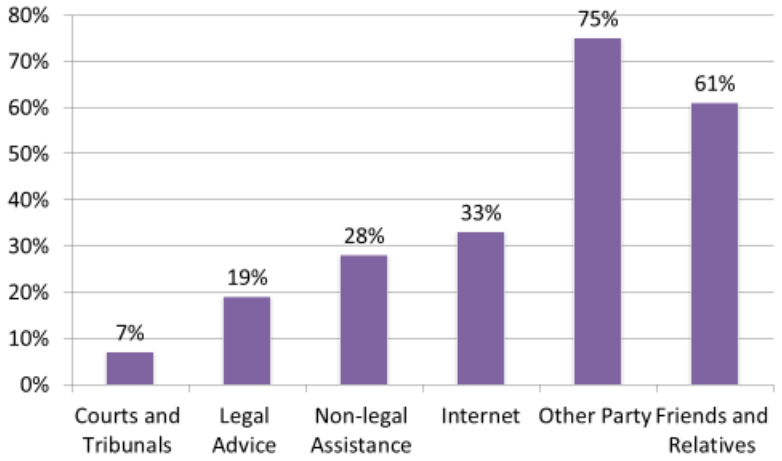
(Canada's 2016 population: 36 million)

- Approximately **50% of adult Canadians** will experience a legal problem over any given 3-year period.
- Approximately **11 million** people per 3-year period.
- Essentially **all of us** over the course of a lifetime.
- Within 3-year period, adult Canadians experience approximately **36 million** separate legal problems.

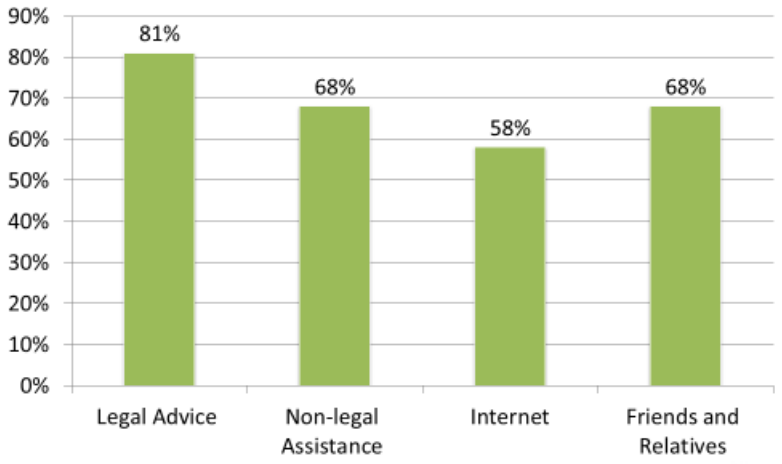
Understanding Justiciable Problems

- **Number**: 58% of people experiencing one problem reported experiencing two or more problems.
- **Cascade**: The more problems, the more likely people are to suffer further problems.
- **Predictive variables**: age, disability, number of children, education, employment, gender, income, etc.
- **Unequal distribution**: low income, vulnerable, marginalized experience more problems.
- **Pandemic**: amplifies problems and inequalities.

How Do People Address Their Problems?



How Helpful Are the Various Service Options?



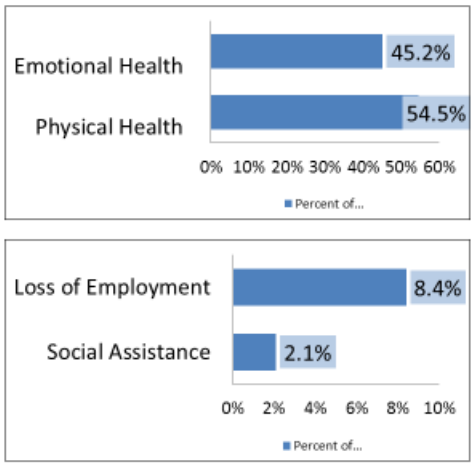
What do we know about costs?

(1 Canadian dollar = 0.80 US dollars = 0.66 Euros)

- Canadians spend on average **$6,100** to resolve their **legal problem.**
  - Almost as much as Canadian households spend on average annually on **food** ($7,739) (2012).
  - Almost half as much as Canadians spend on average annually on **shelter** ($15,811) (2012).
- Individual Canadians spend just over **$7.7 billion** annually to deal with everyday legal problems (and likely much more).
- Inability to resolve problems also results in **missed opportunities**, **income loss** (e.g. vacation days, "non-paid" days).

Justiciable Problems Trigger Health and Social Problems

51% (5.7 million people) report increased stress or emotional problems as a direct result of a legal problem.



Annual State-Incurred Costs as a Consequence of Legal Problems

- Social Assistance: **$248 million**
  - 79,367 people annually
- Employment Insurance: **$450 million**
  - 310,805 people annually
- Health Care: **$101 million**
  - 1,744,194 more health care visits annually (at least)
- Housing
  - 2.7% (100,839) of Canadians lose housing every year
  - 3.6% of those (6,836 people) rely on emergency shelters

… And all likely much higher.

Other Costs

Concerns about Justice, Equality, Fairness, Etc.

"What is Access to Justice?" Study (2014)

- *"Depends on what lawyer you can afford."*
- *"The higher class have more access to justice."*
- *"People with money have access to more justice."*
- *"If I don't have a good suit, the judge isn't going to hear my case."*
- *"I think immigrants are much more susceptible."*
- *"It depends on class, race, … money, everything."*
- *"Language", "Education, "Culture", "Age", "Sexual orientation", "Poverty", "Homless[ness]", "Geography."*

Returning to the question:

What is at stake (or why should we care)?

The answer is in the research.

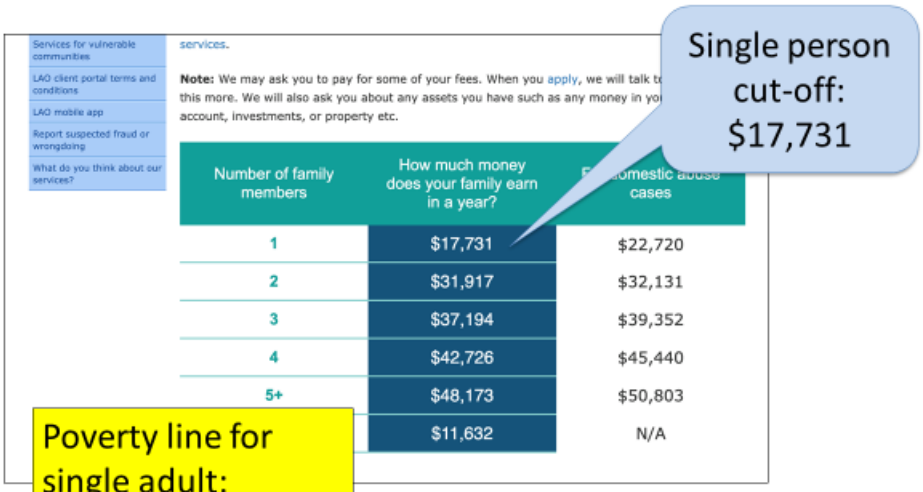
However, if the research isn't enough,

Then just look around…

2. Justice Funding:

Is it a Priority?

Ontario Legal Aid Certificate Eligibility



Single person cut-off: $17,731

Poverty line for single adult: approx. $20,000

Recent Political Decisions and Statements?

See e.g. 30% Cut to Ontario Legal Aid Budget (2019)

"While some lawyers may not welcome renewed accountability at legal aid, every dollar saved is a dollar we can invest in the services that matter most to people, such as public health care and education."

Former Attorney General of Ontario Carolyn Mulroney's office
***Law Times* (10 June 2019)**

Recent Canadian Federal Election

20 September 2021

Election issues

The Globe and Mail (18 September 2021)

- Health care
- Climate
- Child care
- Foreign policy
- Indigenous issues
- Gun control
- Housing
- Jobs
- Small business
- Taxation
- Defence
- Mandatory vaccines
- Future of fossil fuel industry

Not mentioned?

- Justice

EXPLAINER

Canada's 2021 federal election platform guide: compare where the parties stand on top issues

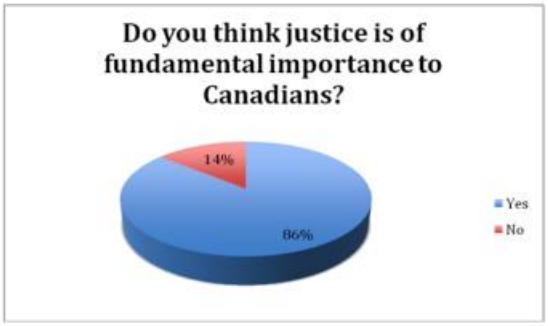
See where the Liberals, Conservatives, NDP, Greens, Bloc and PPC stand on issues of health care, jobs, climate, housing and reconciliation and more

20

However, when the public is asked about their opinion on justice and access to justice …

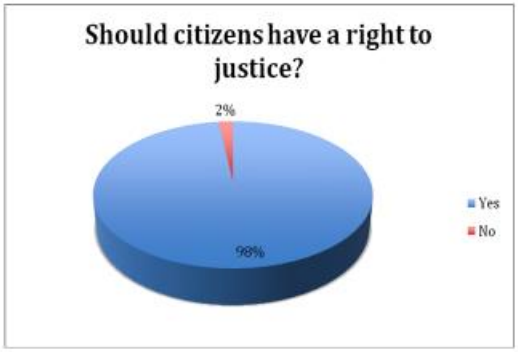
"Do you think that justice is of fundamental importance?"

- *"Yes. Extremely."*
- *"[S]hould be a number one right."*
- *"I'm glad you're asking these questions."*
- *"It should be equally important as our health care system."*



"Should citizens have a right to justice?"

- *"Yes, absolutely."*
- *"Yeah, of course – every citizen should have a right to justice."*



CFCJ *Investing in Justice* Report (2019)

3. Investing in Justice: Does it Make Sense?

CFCJ *Investing in Justice* Report (2019)

- Commissioned by Task Force on Justice.
- Review of international and domestic ROI and SROI on access to justice.
- Legal aid, legal aid commissions, law centres, paralegals, youth justice, rehabilitation and reintegration programs, pro bono, legal empowerment, etc.
- Conclusion: positive ROI.
- Further details: see report and infographics.

https://cfcj-fcjc.org/wp-content/uploads/Investing-in-Justice-A-Literature-Review-in-Support-of-the-Case-for-Improved-Access-by-Lisa-Moore-and-Trevor-C-W-Farrow.pdf

See Also World Bank, "A Tool For Justice: The Cost Benefit Analysis of Legal Aid" (2019)

Selected findings

(See report for others)

There are significant economic (and other) benefits to investing in access to justice.

We looked at a number of projects from a number of different jurisdictions and here are several examples.

UNITED STATES

Civil Legal Aid

US $1 (CAD $0.74) **spent generates approximately:**

Florida	US $7.19 (CAD $9.72)
Texas	US $7.42 (CAD $10.00)
Pennsylvania	US $11.00 (CAD $14.86)
Tennessee	US $11.21 (CAD $15.15)
Alaska	US $5.00 (CAD $6.76)
Utah	US $9.23 (CAD $12.47)
Virginia	US $5.27 (CAD $7.12)
Montana	US $10.61 (CAD $14.34)
Oklahoma	US $7.75 (CAD $10.47)
Louisiana	US $8.73 (CAD $11.80)
Georgia	US $8.00 (CAD $10.81)
California	US $8.14 (CAD $11.00)

UNITED KINGDOM

Civil Legal Aid

UK £1 (CAD $1.73) **spent generates an estimated:**

Civil legal aid for housing problems: £2.34 (CAD $4.05)

Civil legal aid for debt problems: £2.98 (CAD $5.15)

Civil legal aid for benefits problems: £8.80 (CAD $15.22)

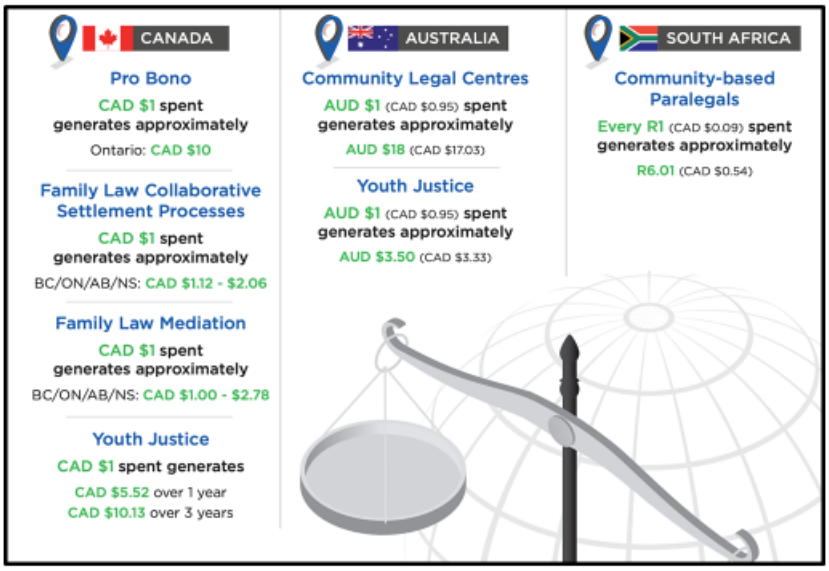
Civil legal aid for employment problems: £7.13 (CAD $12.33)

SCOTLAND

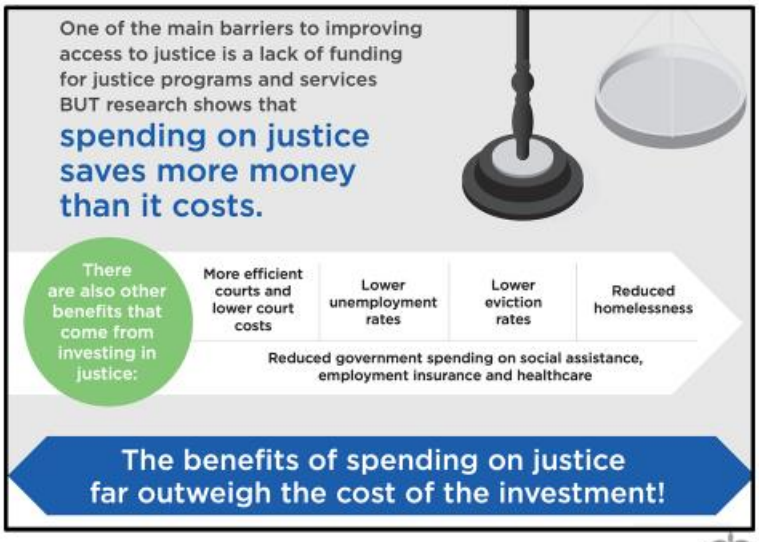
Legal Aid

£1 (CAD $1.73) **spent generates approximately**

£11 (CAD $19.03)


CANADA
Pro Bono
CAD $1 spent generates approximately
Ontario: CAD $10
Family Law Collaborative Settlement Processes
CAD $1 spent generates approximately
BC/ON/AB/NS: CAD $1.12 - $2.06
Family Law Mediation
CAD $1 spent generates approximately
BC/ON/AB/NS: CAD $1.00 - $2.78
Youth Justice
CAD $1 spent generates
CAD $5.52 over 1 year
CAD $10.13 over 3 years
AUSTRALIA
Community Legal Centres
AUD $1 (CAD $0.95) spent generates approximately
AUD $18 (CAD $17.03)
Youth Justice
AUD $1 (CAD $0.95) spent generates approximately
AUD $3.50 (CAD $3.33)
SOUTH AFRICA
Community-based Paralegals
Every R1 (CAD $0.09) spent generates approximately
R6.01 (CAD $0.54)

Conclusion


One of the main barriers to improving access to justice is a lack of funding for justice programs and services BUT research shows that
spending on justice saves more money than it costs.
There are also other benefits that come from investing in justice:
More efficient courts and lower court costs
Lower unemployment rates
Lower eviction rates
Reduced homelessness
Reduced government spending on social assistance, employment insurance and healthcare
The benefits of spending on justice far outweigh the cost of the investment!

SROI in Family Law Report (2017)

- Survey of 166 lawyers practicing family law
- Four Canadian provinces: Alberta, British Columbia, Ontario, Nova Scotia
- Four processes: Collaboration, Mediation, Arbitration, Litigation
- Questions about benefits, limitations, costs, and suitability
- SROI analysis

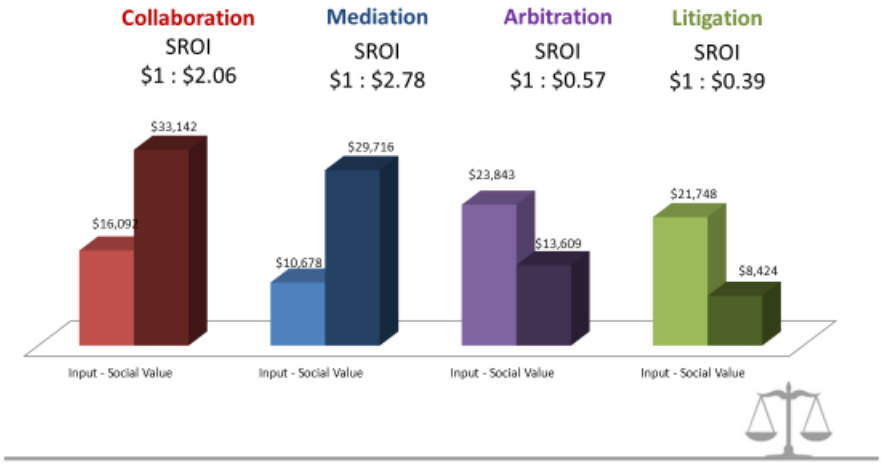
Social Return on Investment (SROI)

(Acknowledging the limits of SROI analyses)

- Compare **investment** made in resolving problems with **impact** and **outcome**
- Factors used to estimate SROI:
  - Length of process
  - Perceived fairness of outcome
  - Satisfaction with outcome
  - Potential for future conflict
  - Cost to the family justice system

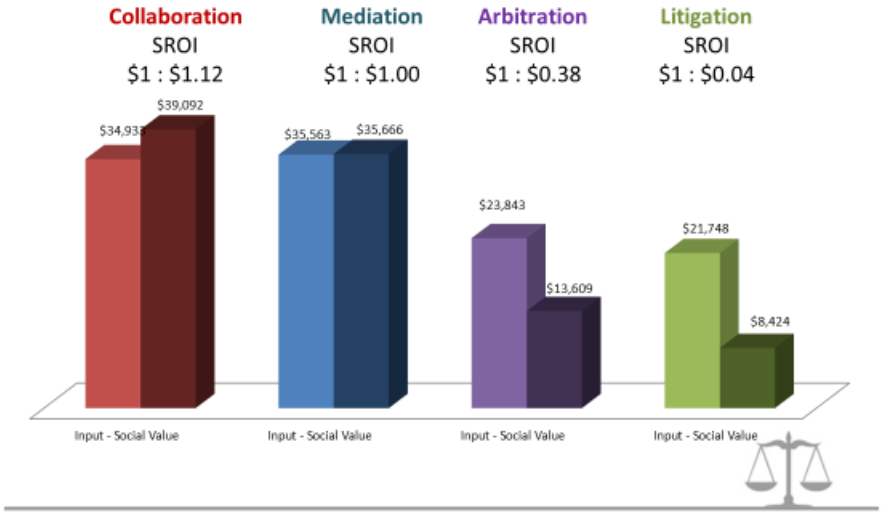
Low Conflict Disputes

For every $1.00 input to resolve a **low conflict** dispute, the SROI is:



High Conflict Disputes

For every $1.00 input to resolve a **high conflict** dispute, the SROI is:



Conclusion

"Taking Meaningful Access to Justice Seriously"

(*Justice Crisis,* UBC Press, 2020)

Traditional approach

- Focus on institutions – courts, tribunals, lawyers, etc.

Meaningful A2J

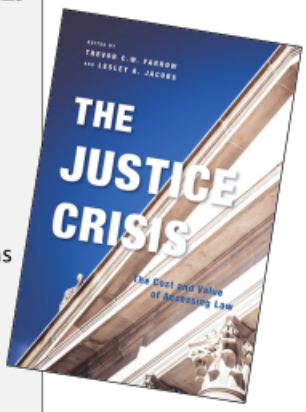
- Focus on people and their ability to access information, institutions and organizations to understand, resolve and prevent legal problems

Four pillars of meaningful A2J

- Problem-focused
- People-focused
- Legal consciousness matters
- Barriers are often systemic – race, gender, immigration, disability

Other factors

- Recognize that most problems resolved outside of formal justice system
- Focus efforts "upstream"
- Paths often as important (or more) as services in term of fairness, etc.
- Investing in justice makes sense



CFCJ FCJC

Canadian Forum on Civil Justice

Forum canadien sur la justice civile

Thank you!

www.cfcj-fcjc.org
Osgoode Hall Law School
communications@cfcj-fcjc.org

If we can do these things …

Then can't we fix this?

The Courts Service's Modernisation Programme
- Angela Denning, Chief Executive Officer, Courts Service

Angela Denning
Chief Executive Officer,
Courts Service

Good morning Chief Justice, Minister, Working Group members, speakers and guests. Thank you for inviting me to speak today on the Court's Service's Modernisation Programme which aims to improve access to justice in a modern digital Ireland. I am particularly grateful for the opportunity to address an open forum such as this and to update you all on our plans for the future.

We can't speak about the future without some context.

Courts systems play a critical role in society – by adjudicating legal disputes and having an oversight role through judicial review to ensure sound public administration. Access to courts is an essential part of a well-functioning democracy. We saw this most recently during the pandemic. The OECD has found that effective access to justice services is a crucial determinant of inclusive growth and citizen well-being, that the rule of law, security and justice influence economic performance, and business & investment climate. Countries with trusted justice systems report higher levels of GDP per capita, property protection rights and national competitiveness. Legal certainty, predictability and businesses' trust in justice systems help positive investment decisions and promote competition.

The Courts Service is responsible for the management and administration of the courts in Ireland. The Service has a unique role supporting the third branch of Government. Our work very much reflects what's going on in society at any given time. We run an operation the size of a small town every day. The figures speak for themselves.

Last year we dealt with 15,500 probate applications, 13,200 supervision and care orders for vulnerable children, and managed €1.98 bn of investments for over 2,500 wards of court. The District Court alone dealt with 382,000 incoming offences of 415,992 criminal matters.

Our services are provided by an FTE staffing complement of 1,100 staff that operates in 33 Court Offices across the country. We support 19 County registrars and 176 Judges. We works alongside more than 20,500 Solicitors and 2,300 Barristers. Our

spend last year was €155m including €32m in fee income. The 103 Courts Service venues are dispersed across the country, and cater for communities ranging from 1,200 (in the case of Kilronan on the Aran Islands) to 1.37 million in the case of the Dublin Metropolitan District Court.

So if we are doing all of this every day, why do we need to modernise?

Firstly, user expectation: In the modern world, service-users expect rapid access to high quality services. Digital technology has driven these expectations, and traditional service models need to align, or be redesigned, to meet the needs of citizens and businesses. In response to these expectations , the modernisation of the Irish public sector has been a long term Government vision since the release of the first Public Service Reform Plan in 2011. The reform agenda is driven to establish Irish public services as user centric, cost effective, more cohesive, and an exemplar in e-government. There is an increased emphasis on greater utilisation of technology and digital services to provide public services. The Government's Public Service Data Strategy 2019 - 2023 and Public Service ICT Strategy promotes the improved use of data as well as an ICT and digitally-enabled society so that more efficient, timely and simplified services can be provided to users.

The Public Service framework for development and innovation proposes a range of new approaches to service delivery in order to make public services more transparent, accountable and effective. Its aim is to strengthen public services in order to deliver better quality and outcomes for the Irish public.

The Irish justice system is also experiencing significant change in its operations: the establishment of the Court of Appeal in 2014, a new structure and operating model in the Department of Justice, the establishment of the Judicial Council, the Commission on the Future of Policing and the Report on the Reform of the Civil Administration of Justice. The Family Court Bill is the legislative platform to establish a dedicated and integrated family court that will redefine existing services, working practices and facilities; and Criminal Law reform continues via the Criminal Justice Hub.

Best Practice is another driver of change: The Irish courts system strives to be highly regarded not just in Ireland, but across the world. However, in relation to leading international jurisdictions, the Irish Courts Service is well behind in designing user centred services and leveraging the full potential of digital technology.

Allied to this, an external Organisational Capability Review published in 2019 identified areas where we could do significantly better. Since its establishment in 1999 as an independent organisation, the Courts Service has modernised but from its inception, the Courts Service has grappled with the need to manage 'fundamental problems in the current management system' of courts and the courts system. With resources and investment focused on running the day-to-day operations of courts and maintaining a large estate of facilities, change and strategic improvement activities were for the most

part ad hoc and poorly resourced. We needed to address the fact that the overall courts system in Ireland performed unfavourably compared to international peers on a number of published benchmarks.

A key aim of the Courts Service is to be recognised as a leader in courts management and operations, especially in the area of digital services. With many Irish public services now providing user centred digital services and access to data in real time, the Courts Service will need to heavily invest in user research to design services that will meet the increasing expectations of its service users.

For the Courts Service, this reform agenda aligns with our strategic vision to 2030 of improving access to justice, by redesigning traditional service models around the user, and transitioning to digital services to increase efficiencies, timeliness and thereby reduce cost.

That Capability Review found that at the time “the current ICT state was a legacy of uneven strategy and inadequate investment”, and these matters will have to be addressed in a planned and consistent manner over the years ahead. ICT in the Courts Service requires particular attention because it is not resourced and configured to deliver effectively for the organisation across its key business functions. In particular, many features of its current ICT systems are not fit for purpose, and are unsuited for managing, administering and delivering services in an efficient and effective manner.’ We had a fragmented IT landscape, with out-dated technology systems which require significant investment if they are to provide the necessary support to the delivery of services and processes.

The same report found that a range of other factors had hampered modernisation including, amongst other things, reliance on the actions of other stakeholders in the courts system to bring about some of the reforms needed.

Legacy practices and behaviours that have existed for decades which render the operation of the courts system less effective than it could otherwise be, and on many occasions fragmented by geographical location or court jurisdiction.

Following the recommendations of the OCR, and lessons from international peers, the Courts Service Board and Senior Management Team realised the need for a long term strategy that would provide the time and investment to support a whole of system reform, driving behavioural and organisational change, and delivering ambitious outcomes. In mid-2019, following extensive consultation, the Courts Service Board approved an ambitious long term vision of the courts service of the future – an ambitious vision of a modern, transparent and accessible courts system that is quicker, easier to access and more efficient.

The strategy sets out seven objectives that the Courts Service aims to deliver and support.

We want to deliver just, user centric services with a focus on accessibility, timely administration of justice, simplified services and processes, integrated with our justice partners with a real emphasis on collaborative working thereby delivering efficient and effective service and providing value for money to the taxpayer. We are seeking to improve services – across five categories that align with the statutory mandate of the Courts Service thus ensuring that all facets of the Courts Service are redesigned or refined to deliver user centric services.

The long-term vision outlines a whole-system approach to service modernisation that will deliver benefits to the Courts Service and its service users, and the broader justice and civil sector.

We are adopting a prudent phased implementation approach with the initial focus on building foundations and capabilities to enable our transformation. That building started at the top – we have a new management team with roles aligned to delivery of the programme. We have recruited to bring in skills which we didn't have in house but recognised that we needed – a Chief Information Officer and Head of Data and Digital as part of the significant strengthening of our ICT unit, a Head of Communications to improve how we engage, a Head of Health and Safety, a procurement specialist, and a specialist Knowledge Manager to provide improved research and library facilities for the Judiciary. We have recognised that we don't have all of the skills we need to undertake a transformation of the scale envisaged in house and so we have partnered with Deloitte for a three year period to assist with the delivery. Part of that contract provides for the upskilling of our in house change programme office team so that we are less reliant on external support in later phases of the programme.

We're spending a lot of taxpayers' money on this so we have very robust governance arrangements in place. Delivery of the programme is overseen by a committee of the Board which was established in 2020 and chaired by the Chief Justice. We have established an external advisory board comprising a judge of the Supreme Court in Victoria with significant court transformation experience, the lead of the Irish Public Service Reform Programme, a member of the UK Behavioural Insights team and an Irish Public Sector Chief information Officer with significant experience in the area of transformational change through digital.

The programme is overseen by a dedicated division in our restructured organisation led by Audrey Leonard, Assistant Secretary. We have established four reform streams of work: family, civil, criminal and organisational using cross-functional teams including very experienced operational staff, ICT project managers, a Change Programme office, project managers with an emphasis on consultation and communication with users from the outset. We have changed the methodology for delivering IT projects to an agile way of working. Traditionally we'd have gathered requirements, programmers would have gone away for a year or two and built a system, it would be tested and inevitably needed changes before it was used because things got lost in translation or legislation or court procedures or indeed life had moved on in the interim. Now we will

build quickly, go back for feedback and make the changes in a much shorter timeframe thereby delivering new systems which people actually want to use, quicker.

The Courts Service ICT Unit has faced a number of historic challenges including recessionary budget cuts and resourcing restrictions, together with unexpected and competing demands for ICT services and delivery. Within these constraints, the office has managed to maintain BAU functions across the organisation, deliver system upgrades, and manage the design, build and implementation of a series of IT solutions and packages.

To ready the organisation for delivering truly user centric digital services, we are addressing a number of areas to enable ICT to be more effective and to service increasing demands.

We have significantly increased the capacity and capability of the team.

We have chosen a new Architectural Framework to support a fit for purpose future ICT state.

Our ICT strategy is being published today.

A data strategy will follow by year end.

Our legacy systems do not support data sharing, limiting data access and reporting. This was very evident during COVID when myself and the management team had huge difficulty trying to get access to data so as to make decisions and discuss with the Presidents of the jurisdictions the wait times and backlogs accruing. The ability to assess the performance of the Irish justice system is limited by the fact that data for many core indicators included in EU Justice Scorecard is not captured, either due to methodology differences or a lack of data availability. Many of the statistics published in our annual report are gathered manually so we have recently established a dedicated unit to look at the type of information we need to capture to produce meaningful management information into the future.

But modernisation is not all about IT and statistics. It is primarily about people. It is our aim to take a very user centred approach to everything we do. We have started to demonstrate this already with a wayfaring proof of concept complete in Áras Uí Dhálaigh, the introduction of child distraction areas in family law offices. We have a family court pilot underway in Limerick. A new appointments system is being piloted in some Dublin and Limerick offices so that people know what time they will be seen at a public counter, how long they will be and how much money they need to put in the parking meter. Our new website has 3 million hits a year and is fully accessible and more user friendly than its predecessor, though we have more to do! I have sought funding in the budget this year for a plain English expert to work on our website so that people who have literacy challenges will find our information easier to navigate, bearing in mind that the Government information service found that the average

reading age of an adult in Ireland is nine and one in six Irish adults cannot read a bus timetable. We are increasing our use of video and infographics on our website and in our communications. On foot of a suggestion from our staff we have recently become a JAM friendly organisation. JAM Card allows people with a learning difficulty, autism or communication barriers to tell others they need 'Just A Minute' discreetly and easily. 75% of our staff underwent training in recent weeks.

So far so good and then we get to March 2020 and the pandemic.

Like court systems worldwide we were thrown into a massive experiment and like all crises it gave us an opportunity to accelerate some changes which would have happened anyway (but undoubtedly at a slower pace and to try out some things which we could not have imagined weeks earlier). As a common law jurisdiction we focus on precedent, we are guided by the past. We believe rightly or wrongly that what came before is inherently better and more trustworthy than some uncertain future innovation. We prefer slow steady change and we got big bang change instead.

For the past 18 months our aim was and is to protect the health and wellbeing of employees, judges and court users while continuing to provide access to justice. We succeeded in providing a safe environment through the use of a robust COVID-19 safety management programme while adapting quickly and maximising the numbers of cases we could progress within public health guidelines. Physical distancing requirements in particular had a dramatic effect on our operating environment. The Courts Service has provided in-person and remote facilities throughout the pandemic, with a particular focus on prioritising urgent business and those who are vulnerable, such as victims of domestic abuse. I am particularly proud of our participation in the "still here" campaign and of the commitment and dedication shown by our staff by continuing to provide access to justice at a time when the country was almost entirely shut down.

We adopted a Digital First approach throughout the pandemic. Rather than use a traditional checklist to manage compliance in buildings, our 90 local safety reps used iAuditor on their phones to complete regular checks, thereby providing instant data to our COVID-19 response team.

We also had to change how we communicated. We are aware that 96% of Irish people carry a mobile phone so we moved to use social media and Twitter in particular very quickly as a way to get messages directly to people.

We had facilities to take evidence from prisons by video link prior to the pandemic, however this dramatically increased during the pandemic. We now do more video links per month than we did in a year pre-COVID. This has had significant benefits across the justice system, not just in terms of cost. Movement of prisoners to court has a significant impact on prison life with training and education disrupted as prisoners often

have to overnight in another facility before a court appearance or spend long periods of time travelling to and from court. We are now piloting this with some Garda stations.

The introduction of remote courts has changed how we work. Our platform is the world leader in interoperability so that users do not need particular kit or software to participate. It may not be the fanciest but it is free to the user, simple to use for those who are not at ease with technology and it works from any phone or device. It is not perfect but remote courts are the worst they are ever going to be today. They will only improve. We have seen an increased demand from certain witnesses to provide testimony remotely thereby eliminating costly travel time and time wasted waiting to give evidence. We have seen a demand to continue straightforward administrative work remotely. Remote courts also remove some of the unseen barriers to justice for those with physical disabilities and those in poverty – the costs of childcare, time off work, travel expenses, car parking and appropriate clothing. We have seen increased participation in some types of proceedings such as insolvency where participants can dial in. Chief Justice McCormack in Michigan spoke recently about courts being less intimidating on screen – she said that when you are in the comfort of your own home, where you feel safe and secure, it is easier to feel confident in letting the court know what's on your mind. Everybody's Zoom boxes are the same kind of size. There's something equalising about that. She also said that "[l]osing a bit of decorum is a small price to pay for increasing access."

Victim Support informed the Oireachtas Committee on Justice this week that measures taken in courts during the pandemic which positively improved the experience for their clients included the staggering of lists so there was less waiting around to give evidence, lower numbers of people in the courthouse and the use of technology.

To meet the challenges of the future and demand for new means of providing access to justice, we are well underway to completing a €2.2 million investment in the installation of video technology to provide 103 video enabled courtrooms in total by year end.

One of the significant challenges for us in the past 18 months was our over reliance on paper based systems and on travel to buildings to deliver paper – we introduced Sharefile to help with this but we need to continue to reduce our reliance on paper. Courts systems worldwide are now at a post COVID crossroads. The big question for me is how to bring the benefits with us so as to best deliver for court users? I would like to retain the innovation and agility we demonstrated. We have shown that we can do things differently without impacting the quality of justice in many types of proceedings.

In seeking to reduce wait times and procedure delays, enhance user experience and reduce costs the Courts Service is targeting ambitious improvements that are well beyond our ability to independently deliver. To realise the full benefits of this system

wide approach will require dialogue and collaboration with a broad range of stakeholders. Ultimately we want to benefit our service users and will be dependent on them to join us on the journey. Excellent communication and engagement from the outset is key to uptake of newly redesigned services.

We have started this already with our engagement in relation to the design of Hammond Lane which will be our dedicated family law centre in Dublin. Our Family law reform team have consulted with a large number of stakeholders including public family law users, staff, judges, practitioners, service providers, state agencies and NGOs who assist families in relation to the future state design of a model family law building and fed the results back to the design team working on the building to influence how the building will work best for those in it. We have had a really positive response and received fantastic insights in relation to all aspects of the building. Public users have told us that the building should be less intimidating, less cramped with better signage and have bigger waiting areas to provide more privacy. None of this is rocket science but by engaging this way we have the knowledge to take an evidence based approach as we move forward.

This new need for stakeholder engagement ranges from working side-by-side to design new service models to ensuring legislative changes are appropriately assessed for their impact on the Courts Service and the broader justice system.

Lessons from previous projects have shown the risks of not engaging stakeholders – poor adoption of new processes and systems, delayed legislation halting planned improvements, and a lack of alignment with other change initiatives.

The Courts Service consulted with stakeholders from across the sector during the development of the long term strategic vision. However, this was very much the first steps in what needs to be the establishment of a coalition of willing reformers, committed to working with us to modernise the courts system.

In designing our initial programme to deliver the Courts Service long term vision, key elements are our comprehensive stakeholder engagement strategy, robust governance structure with stakeholder representation, and transparent regular communications with key contacts, groups and organisations.

As you are aware a group was established chaired by President Peter Kelly to report to the Minister for Justice and make recommendations for changes with a view to improving access to civil justice in the State, promoting early resolution of disputes, reducing the cost of litigation, creating a more responsive and proportionate system and ensuring better outcomes for court users. Our civil reform team are working with the Department of Justice on the implementation plan for the recommendations. One area we are giving particular attention to is the streamlining and standardisation of forms. We have almost 50 forms to apply for maintenance in Ireland and 900 on the civil side of the house. We simply cannot expect people who cannot afford legal

representation to have to deal with such complexity. One area we are prioritising is the system for the recovery of debt in Ireland which is currently very cumbersome and complex and entirely paper based. This makes the recovery of even small levels of debt relatively expensive. The cost of that is pushed onto the consumer. Small businesses owed money cannot recover that quickly and at a reasonable cost and encounter unnecessary liquidity challenges. Our aim is to streamline the process and then digitise.

The Courts Service has outlined an ambitious long term strategic vision to 2030 that will fundamentally alter the organisation and how it meets the changing needs of its service users. The long term strategy aims to align the Courts Service with the broader Justice and Civil Reform programmes that will deliver a modern, digital Irish Public Service for citizens and businesses.

No one element exists in isolation from the other parts of the system. There are a wide range of interdependencies between all elements of the system. The Courts Service has a significant role to play in helping to create conditions conducive to a more effective courts system, including amongst other things, the deployment of modern technology, services, facilities and processes. In addition to those matters it can control, the Courts Service will have to work collaboratively with other key stakeholders if it is to help/support those changes and reforms that will contribute to an effective and efficient courts system.

We interact with a diverse and complex range of users across a range of services and channels. The current experience of those users is often one that is marked by frustration – the significant cost of court cases, the wait times and duration of procedures, delays in accessing required information, and the need to travel to access and deliver hard copy documents. This experience is in part due to a system that has evolved over time around the needs of the system and courts service, rather than the needs of users.

The extent to which many of these reforms actually happen is outside the sole and immediate control of the Courts Service. Achieving a more effective and efficient courts system requires all of the elements working effectively together in common purpose.

Moving forward, the Courts Service needs to play an enabling and supportive role, at the heart of a collaborative effort across many parties to deliver a step-change in the performance of the courts system in Ireland.

One of the “Pillars” of reform under the programme is the provision of a “Modern Estate and Facilities” with a rationalised estate, concentrating court sittings in fewer venues, the development of specialist centres and investment in modern facilities to support court users.

It is our ambition over the course of our Modernisation Programme to reduce the requirement to attend at court offices and courthouses through the use of improved digital services designed to best serve users. An Estate strategy will be developed underpinned by data including demographics, case load, distances between courthouses, public transport infrastructure and travel times. Our estate strategy will also be impacted both by the Family Court Bill, which aims to provide regional dedicated family courts, and by our experience during the pandemic. Future decisions about courthouses will be influenced by the National Planning Framework and spatial strategy/policy and by policy on Climate and Environment. The large variation in community type and size we serve in our courthouses directly impacts on venue utilisation. In terms of wait times across the country, there is significant variation across both the Circuit and District Courts. Wait times are strongly aligned with demand and capacity mismatches, and we are very conscious that extended wait times can have significant impacts for individuals and businesses. A properly planned estate should assist with the maintenance of low waiting times. We know that given the age of our estate (our courthouses are an average of 162 years old) it will be a significant challenge to meet environmental targets and particularly to have all of our buildings at B rate by 2030. We have established a dedicated Sustainability unit which has recently been expanded to face the challenge ahead.

I just want to finish by saying that OECD research has told us that:

> "Common barriers to accessing justice range from financial cost, time and the complexity of justice systems to geographical distance, lack of legal capability and language skills."

Our Modernisation Programme seeks to assist litigants by addressing each of these barriers thereby breaking the cycle of decline caused by unmet justice needs. The inability to access justice can be both a result and a cause of disadvantage and poverty. We need to rethink the traditional approaches to delivering services by making those services more personal to the individual and their situation. Choice is key.

It is my intention that our Modernisation programme will provide just, user-centric, simplified and timely access to justice. We intend to do this by maintaining the innovation and agility we have demonstrated over the past eighteen months, by collaborating with users and by keeping the needs and requirements of litigants at the centre of everything we do.

Angela Denning, Chief Executive Officer, Courts Service with Mr. Justice Frank Clarke, Chief Justice, at the opening of the Conference on Access to Justice organised by a Working Group of nominated representatives convened by the Chief Justice.

Day 2

Saturday 2nd October 2021

Plenary Session: An Overview of Unmet Legal Needs - Eilis Barry, Chief Executive, FLAC (Free Legal Advice Centres)

Eilis Barry
Chief Executive, FLAC

Before I begin I just want to add my voice to the chorus of tributes being paid to the Chief Justice, a great friend to FLAC. He has consistently highlighted the need for broader and better legal aid at every opportunity, since the statement for the new legal year in 2017 where he committed to making access to justice a central focus of his tenure. It was also featured in the launches of the annual reports of FLAC, Mercy Law Centre and Community Law and Mediation, in the opening address at FLAC's Access to Justice Conference in 2019 and the 40th anniversary of the Legal Aid Board. FLAC is really proud to be part of his Access to Justice Committee.

I also want to pay tribute to Mr. Justice MacMenamin, a driving force on this committee, whose signature I recently noticed, is on the articles and memo of FLAC. FLAC has been campaigning for over 50 years for access to justice so it is really encouraging to have two Supreme Court judges with such an interest and commitment to access to justice.

I also want to echo the thanks and acknowledge the huge work that my colleagues on the committee have been engaged in: Attracta O 'Regan from the Law Society with her colleague Ann Tuite and Joseph O'Sullivan from the Bar Council of Ireland. Both bodies have always been very supportive of FLAC's work in terms of funding, volunteering in FLAC clinics and their endorsement and support of the pro bono pledge which was launched last year.

I am sad to hear that access to justice is losing a champion in that Philip O'Leary will shortly be stepping down as chair of the Legal Aid Board. I know he cares passionately about access to justice. He suggested having Mark Benton at this conference and has pointed us in the direction of Canada which offers the way forward to meet unmet legal needs in a number of critical respects. FLAC's Managing Solicitor recently emailed me that 'Canadians are cool', which pretty much sums up what I want to say this morning.

I also want to thank the incredibly efficient and effective Sarahrose Murphy and Patrick Conboy from the Chef Justice's staff, who made it all extremely pleasant and fun. It was really nice to see them all in person yesterday for the first time.

I was very struck by the amount of people wanting to speak and contribute to today's events. Normally we have to strong-arm people into speaking, but rather we were turning away a number of people wanting to contribute as panellists. I believe this is indicative of that desire for change that was so evidently clear from yesterday's contributors.

Change in Progress

Change is in the air. A number of the issues highlighted at the FLAC's Access To Justice Conference in 2019, and those which will be examined in some of the breakout sessions this morning, have been reflected in some of the changes that are happening.

FLAC has highlighted and campaigned for a review of the civil legal aid system for quite some time. We are delighted that that is to happen and noted Minister Humphreys' mention of it at yesterday's event. I would love to have heard more detail, particularly about the scope and nature of the review.

A number of FLAC staff have been engaged in consultations in relation to the Courts Service's Modernisation Programme that Angela Denning spoke about. There seems to be a really welcome cultural change within the Courts Service, a real openness, which is very striking. We look forward to ongoing consultation, especially in relation to issues like lay litigants, reform of rules and procedures and online hearings, and so would be delighted to be part of the coalition of reformers that Angela referred to yesterday. Professor McKeever's research on litigants in person is a really important contribution to the modernisation programme and I am delighted that she is contributing to workshop D.

We also welcome the long overdue reform of the family justice system, albeit with concerns that some of the hard won legal rights and protections may be lost sight of in the embrace of mediation as the almost only solution to family law issues. I practiced family law before the current legislative architecture of protections for mainly dependent women and children was introduced, and it was grim. It is vital that legal advice be readily available as to what people's rights are, and what would the likely outcomes be in a court situation before mediation starts. Especially in relation to issues like the implication of pension adjustment orders, transfer of family homes and the implications of settlements on social welfare rights. I am uneasy at the notion of people in domestic violence situations, instances where there is huge disparity in power and resources or where coercive control may be present, being unduly pressurised into mediation, where it is not the job of the mediator to ensure and enforce the protection

of the rights of vulnerable/dependent adults and children. We look forward to more consultation in that regard.

We contributed to the Review of the Administration of Justice and welcome a number of its recommendations. However, we have sought consultation in relation to the implementation of its recommendations. Civil society was not strongly represented on the review group. I was especially dismayed to hear from the Minister that legislation is planned in relation to judicial review as we have particular concerns about those recommendations being implemented.

We very much welcome the proposed long overdue reform of rules and procedures but have some concerns that review recommendations if implemented will put too much onus on a unrepresented litigant to identity with clarity their claim. It is vital that these reforms are equality, human rights and poverty proofed as is required by section 42 of the IHREC Act.

Public Sector Duty

There is a growing understanding of the implication of this public sector equality and human rights duty for statutory bodies like the Courts Service. FLAC will shortly publish a report on the implications of the Public Sector Duty (PSD) for the Courts Service, the WRC and the Legal Aid Board, which draws on learning from the UK especially in relation to the equal treatment bench book. We are really lucky to have Judge Tamara Lewis who was heavily involved in the revised Equal Treatment bench book with us today along with IHREC Chief Commissioner, Sinead Gibney at Workshop F. We were very pleased to hear that the WRC is providing their adjudicators with the section of the UK equal treatment bench book on catering for lay litigants.

Pro Bono

Another significant development has been embedding of pro bono in Ireland with the launch of the Pro Bono Pledge in 2020 which asks the legal profession to commit to provide a minimum aspirational target of 20 pro bono hours per lawyer per year. The Pledge was developed by an independent grouping of law firms, barristers and in-house legal teams and is coordinated by FLAC's public interest law project, PILA and so far 2,500 legal practitioners have signed up to it.

In addition to Ireland's two Pro Bono Associates, Eithne Lynch and Carol Ann Minnock,, for the first time, a Pro Bono Partner has been appointed and so I want to congratulate Niamh Counihan from Matheson. I am also so delighted that Eamon Conlon who really got pro bono off the ground in Ireland is speaking today at workshop D.

Targeted Legal Services

We are also pleased with the establishment of a dedicated legal service for Travellers albeit with only one solicitor, within FLAC. FLAC also enjoys a partnership with the Traveller Equality and Justice project in UCC and both Dr Fiona Donson and Mark Willers QC who serves on its advisory board of the partnership are with us here today.

The centre for environmental justice established by CLM, is a significant welcome development as Judge O'Leary pointed out yesterday. The Aarhus convention requirements are the gold standard in terms of access to justice and we are delighted to welcome Áine Ryall as moderator for workshop B.

Cost of Access to Justice

Yesterday we heard the moral, legal, social and economic imperatives for access to justice.

A strong civil justice scheme is an important part of the foundation of civil society, the platform on which we build everything else. It is obviously important for the individual, and has a wider societal impact. It increases social inclusion, foundational to democracy and the rule of law, and is a vital tool in holding the State and other powerful bodies to account as Judge O'Leary illustrated, quoting the UK Supreme Court. Recent research shows that improved access to justice also results in positive health outcomes.

It was fantastic to hear from Professor Farrow about the research which shows that for every dollar invested in access to justice there is a return of $9-$15. The Cost of Justice project of the Canadian forum on civil justice illustrates the enormous social cost we are incurring because we do not have a sufficiently effective justice system.

The reality here is that we have no way of measuring the enormous social cost in not having a sufficiently effective system, although FLAC witnesses that social cost every day on our Telephone Information Line, in the Traveller Legal Service, the Roma clinics and in our advocacy and research work on debt.

The 'Implementation Gap'

We would like to see access to justice being made a central focus for all of the reform that is happening and to borrow further from Professor Farrow's research, where he talks about the gap between ideas and implementation – the implementation gap. Change won't happen just because people want it to.

One important factor contributing to the implementation gap is a lack of public interest and support for access to justice. We know in Ireland that the attitude of some

members of the public and civil servants is to equate access to justice with money for lawyers. Professor Farrow's research highlighting the economic and social benefits will hopefully result in a seismic change in attitude in this regard.

In our current legal aid campaign FLAC has been engaging with NGOs about their experience of legal aid and it was striking how interested they became in it and seen how relevant it is in their work.

Another reason suggested by Professor Farrow for the implementation gap is that some of the problems we face are intricate, systemic issues and the leadership of our civil justice system is diffuse. It is difficult to say that there is one civil justice system, but more accurate to say there are several systems and parts of systems with important elements. The various elements of the current system have a large measure of independence from the other elements, so you have the Judges as independent decisions makers, other quasi-judicial bodies like the WRC, lawyers as independent advocates with their professional bodies and more recently the LRSA's new functions, the Courts Services, the Office of Public Works, the Legal Aid Board, the Department of Justice and DPER. FLAC would also include relevant bodies like the Citizens Information Board, the Law Reform Commission and FLAC with the Independent law centres network as elements.

There is no one group in charge of or with the power, capacity and resources to cure systemic problems and to me that is why, for FLAC, the Chief Justice's Access to Justice Working Group is so important. It brings some of the key players together and I am really happy that such a broad range of the key actors are attending this conference

Civil Justice Movement

We need to do more than just to talk about an effective civil justice system. We need a civil justice movement, which engages the public and all of the key players in the justice system.

We need a broad based access to justice campaign akin to the government led campaign for Ireland to become the EU's dispute resolution forum of choice following Brexit, it was very striking how key players were then able to come together to promote that initiative including the Attorney General.

The Canadian Action Committee on Access to Civil and Family matters, brings people from all corners of Canada's justice system together to propose and examine approaches on this critical issue. It adopted Justice Development Goals. Progress on the goals are published annually. Its Action Committee coordinates national metrics on justice and connects people to share innovations throughout the year and at its annual summit.

I hope that one legacy of this conference would be that the Chief Justice's Access to Justice committee could be developed into a more formal broad based committee involving all of the key players from Ireland's Justice system who have been at this conference along the lines of the Canadian model with action plans, goals and indicators.

Unmet Legal Needs

In talking about unmet legal needs, the nature and level of unmet legal need in Ireland is neither well-understood nor comprehensively researched. We have empirically little data about legal need, the social and financial impact of unmet need referred to by professor Farrow. We have no idea of the actual volume of legal need and no idea of the volume of unmet legal need and the extent of the social and financial consequences. Historically legal services and the legal education sectors have placed very little emphasis on the importance of evidence based approaches to the design and delivery of services.

The Chef Justice pointed out the similarities between family and commercial law, but the there is something deeply uncomfortable about having a state of the art commercial court in comparative luxury compared to the state of the completely overstretched family law District Court across the river. Research is vital to help us understand where legal need is greatest and to prioritise resources accordingly. I would like to highlight two different aspects of unmet needs which our legal system, including our legal aid system, is particularly ill equipped to deal with.

Clustered Injustice

Luke Clement from the Legal action group in the UK has written about what he calls 'clustered injustice' - that people who live with disadvantage experience clusters of associated legal problems either at the same time or consecutively. Commonly experienced legal problems can coalesce into clusters; the experience of one problem can lead to another in snowballing effect. Solving one problem does not mean the end of legal issues. For many people living in disadvantage their legal problems are multiple, interconnected and messy. People living with disadvantage are constantly involved with the law in its most intrusive form.

I felt like he must have been writing his book sitting in the FLAC office. We see what he describes so vividly in the Traveller legal service, with the daily lives of Travellers constantly banging up against sharp legal things like summary evictions, discrimination and the criminalisation of their way of life.

Clements says that people most likely to experience multiple legal problems include- and the list is long- lone parents, people in local authority housing, adults with

longstanding illnesses or disabilities, and adults on means tested payments people with significant debt problems. FLAC would add to that list: homeless people, children with disabilities, people living in direct provision, people who fall foul of the immigration system and ethnic minorities, and people who have difficulty meeting the habitual residency test.

Collective Rights

The second area of unmet legal needs that our legal system is ill equipped to deal with are what the academics call diffuse or collective rights - rights that are shared by many but far too onerous for one individual to enforce – such as in relation to environment, privacy, systemic or discrimination.

In looking at unmet legal needs, FLAC maintains that access to justice is a continuum of issues. It includes information, legal advice, advocacy, access to the courts, access to an effective remedy and fair and just laws. Unmet legal needs arise at each of these points. Viewing unmet need as a continuum and committing to address needs earlier could have a tremendous implication for costs.

Access to Information

Broadening accessibility to legal information and advice should be the number one priority.

What the FLAC Telephone Information Line tells us about people who know they may have a legal issue, is that there is a huge unmet need for legal information and advice, especially in the areas of family law and employment, which is not otherwise available. The phone line is only reaching the tip of the iceberg in this regard. Unfortunately for many who contact us, FLAC may be the first and last port of call due to inadequacies in the legal aid system.

At the end of May 2020, employment law topped the area of queries, for the first time in FLAC's recorded history. What is most worrying is that due to the inadequate legal aid scheme there is nowhere to send them for further advice and representation. There may be a possibility of getting legal aid in family law cases but we are seeing lots of people who are outside the very strict means test and have no hope of being able to pay for a solicitor. There is no legal aid in employment law cases, so there is nowhere to refer the almost 2000 who got through on the phone line with often complex employment law issues.

We also know form our work as a law centre, the acute needs of people who in live in disadvantage for information, advice and advocacy in circumstances where they may have no idea of what the legal issues are or how the law can help.

In Canada, the BC legal aid system has a requirement to be flexible and innovative and they have multiple ways of getting information across both to people who know they have legal issues and those who don't. This includes legal information outreach workers, aboriginal community legal workers, and their system actively supports community partners and community workers, a vastly different model to our own legal aid system.

Recent academic research on the best ways to provide access to justice to people living in disadvantage recommends that it should be provided by small local independent services. People who know most about housing, social welfare, debt and discrimination are those best placed to provide practical early advice to support those whose problems are messy and multiple.

To me that is what the Pringle Report recommended 40 years ago - a network of community law centres. When you hear small, local and independent I immediately think of Dave Ellis in Coolock Community Law Centre, who was determined not to do traditional litigation but focussed on welfare rights, community education and training. A network of community law centres would also be a comparatively cheap and highly effective way of meeting unmet need for people living in disadvantage.

Also the possibility strikes me that the Citizens Information Board with their network of Citizens Information Services are very well placed to have community legal workers and outreach legal workers, these could have the relevant expertise and could be supported by a reformed Legal Aid Board, and I welcome Michael Owens, of the Citizens Information Board here today.

Legal aid

The problems with the legal aid system are well documented. There remains very serious and significant gaps in our legal aid system, both in terms of the limited coverage of that system, defined by extensive exclusions and strict requirements of financial eligibility. There is a perception that legal aid is not available in one of the biggest issues of the day – homelessness. There is no legal aid for employment or discrimination claims, no matter how complex the issue or how vulnerable the claimant may be. Our legal aid system is particularly unsuited to deal with people with multiple legal issues and collective rights as its focus is predominately on family law. It make no sense that it is not proactively involved in the provision of legal information at an early stage. It makes no sense that it cannot represent its family law clients in their related social welfare appeals, their WRC claims or represent them in repossession hearings where their homes are being repossessed.

FLAC together with 48 NGOS have campaigned that the proposed review of legal aid be a root and branch review, that will scope and map unmet legal need. The review should explore the functions of the Legal Aid Board, including functions such as the

provision of information, advocacy, education and research; the eligibility criteria for legal aid, including the means test, and financial contributions, the areas of law covered, and the methods of service delivery, such as community law centres or targeted/specialised legal services for disadvantaged groups and individuals.

We also called for it to be an independent review chaired by a person of status, such as a judge with an interest in access to justice, such as the original Pringle Committee. And to have at its centre the voices of those who experience unmet legal need and involve key stakeholders.

It also needs to measure the civil legal aid system against international standards and compliance with the State's obligations under national and international human rights laws, as so comprehensively identified by Judge O'Leary yesterday.

The Continuum of Access to Justice

Part of the continuum of Access to Justice is access to the courts and effective remedies. I have mentioned the need for accessible rules and procedures and the need to provide for lay litigants.

It is for another day to examine which rights get adjudicated upon and in which fora. It is to be regretted that the Review of the Administration of Justice did not deal with the urgently needed reform of the vast array of quasi-judicial bodies, as these are where for the most part the rights of disadvantaged people are adjudicated on. Such a review is even more urgently in need of reform in the light of the *Zalewski* judgment. I know this is one of the issues the Law Reform Commission is looking at.

Even if you are lucky enough to get legal representation, there is no real equality of arms beyond a strict procedural equality of arms. This is especially true if you are up against the State with its ample pockets, local authorities or large corporate entities like social media giants.

The procedural rules on standing, costs, delays, class actions and multi-party actions may restrict the ability of people living in disadvantage in making or defending claims, especially where rights are held collectively like those relating to the environment or privacy. Some practice directions in relation to immigration have also been particularly problematic.

FLAC has previously expressed concern about the use of very strict confidentiality clauses, usually by a state department, which binds the claimants and their legal representative to absolute confidentiality and allows the state to continue with the alleged illegal behaviour. This practice is also a terrible use of court time. There should be some better procedure for public interest matters to be adjudicated upon even if settled.

The last part of the access to justice continuum are fair and just laws. We currently have laws that criminalise the way of life of Travellers and some laws governing eviction can result in summary evictions without any meaningful opportunity for access to legal advice let alone access to legal aid. These laws have been condemned by international human rights bodies, and remain unamended.

Conclusion

We need research to measure the volume and type of legal need and in particular, unmet legal need, particularly for people living in disadvantage, so that we utilise evidence led approaches to the design and delivery of legal services.

We need a reformed flexible legal aid system that can provide small local independent services and which prioritise advice and information services in accessible ways for people who know and don't yet know that they may have legal issues. This would include a network of community law centres and people with expertise in housing, social welfare, debt and discrimination.

We need a more formal broad-based forum for dealing with access to justice which brings together people from all corners of the justice system, many of whom are here today and have expressed a desire for change.

We undervalue access to justice if we don't move from ideas to implementation. Let us form a coalition of reformers to implement the great ideas we are going to hear at this Access To Justice 2021 Conference.

Thank You

Reports of Breakout Workshops

Workshop A: *Awareness and Information*

Moderator:	Sinéad Lucey. Managing Solicitor, FLAC (Free Legal Advice Centres)
Panellists:	Michael Owens, Citizens Information Board
	Marianne Cassidy, Head of Civil Reform, Courts Service
	Raymond Byrne, former full-time Commissioner, Law Reform Commission
	Mark Benton QC, CEO, Legal Aid BC, British Columbia
	Rose Wall, CEO, Community Law and Mediation
Rapporteur:	Shir Givati, Judicial Assistant

Introduction

Discussing the avenues for access resulted in a fascinating discussion, led by Sinead Lucey, regarding how the general public views the legal system, and how the courts can improve public access.

Michael Owens

The first panellist, Michael Owens discussed what the Citizen's Information Board has done to inform citizens as to their rights and available legal support within the public sphere. This work has been vital over the past year, when people needed information on employment and housing rights and laws. According to the figures, 370,000 people contacted the network of local Citizens Information Services requesting support, and Information Officers worked on over 4,000 representative advocacy cases throughout the 2020 year, highlighting the need for a unified legal resource.

In the comments section of the webinar, a suggestion was made to include a dictionary of legal terms when sending paperwork to individuals, and Mr. Owens stated that he would make a suggestion to the Citizens Information Board to include legal definitions on the website

Rose Wall

Rose Wall, Chief Executive Officer of Community Law and Mediation, which operates independent law centres in Dublin and Limerick, discussed the work of the Centre and advocated for more community law centres. The Centre provides community support and empowerment through legal information, education, advice, representation and

advocacy regarding children's rights, social welfare law, employment law, housing rights and more recently environmental justice. She highlighted the fact that access to justice must not only be sought, but rather embraced and encouraged within smaller communities, and that this can only be done by opening community law centres, especially for those who live outside of Dublin. She mentioned personal examples from her work in Limerick where she observed that by helping the law reach individuals through lectures, talks, and information sessions, vulnerable communities are more likely to take advantage of their rights and the system becomes more accessible.

Mark Benton QC

Mark Benton QC, the CEO of the BC Legal Services Society in Canada gave examples of using plain language to promote legal solutions. He presented examples such as comic books which described how domestic abuse can affect indigenous communities, and how the law can help. He stated that "[w]hat people want is to not have their legal problems anymore" and explained that describing how the law can help these individuals also removes the stigma and fear associated with litigation. He left us with the question: without properly educating people and showing how a legal option may be the solution, how would laypersons be able to utilise the judicial system for their benefit? As a final comment, many were interested in how the Society was funded. Mr. Benton explained that funding was provided by the government, as the organisation was statutorily mandated and the discussion briefly turned to the possibility of government funding for an extension of legal aid in Ireland.

Raymond Byrne

Raymond Byrne, former Commissioner of the Law Reform Commission, discussed the Commission's *Report on Accessibility of Legislation in the Digital Age* (LRC 125-2020), which recommended that there should be planned programmes of consolidation of our legislation, overseen by a multi-agency group and applying "digital by design" principles, so that our laws are more accessible. The Report also recommended that legislative information should be linked, incorporating excellent existing resources, such as the electronic Irish Statute Book, the Citizens Information website, the Oireachtas website, and the Commission's Access to Legislation work on its website. The planned programmes of consolidation would involve a "rule of law bonus" in that the law would be clearer and more accessible, so we would all have a better chance of knowing what we are supposed to do, and not to do. He said that, adapting to Ireland a cost-benefit analysis of a similar proposal to consolidate Welsh legislation, the planned programmes there lead to savings in legal costs of at least €250 million over ten years. He also emphasised the importance of using plain language as an aspect of access to justice for the general public. He suggested that Latin terms such as 'guardian *ad litem*' are confusing and referred to NALA's publications that adapted

Latin terms into English. Mr. Byrne also discussed the need to have qualified legal practitioners available to assist in some mediation processes to ensure parties are able to understand the full effect of terms agreed; this should, for example, be the case in family law disputes.

Colleen Dube

Colleen Dube, CEO of the National Adult Literary Agency discussed how NALA creates online booklets with definitions to legal terms and makes them available to the general public, showing how outside resources are attempting to bridge the gap in the system. Many comments in the webinar promoted the idea that it would be useful for the Courts Service to provide a similar document.

Marianne Cassidy

Marianne Cassidy, Head of the Civil Reform workstream of the Courts Service's Modernisation Programme discussed how the Service is listening to its users and frontline staff and how feedback is helping to form a more inclusive and user centric Courts Service. For example, the issue of plain language came up in an example when court officers reported that individuals were appearing in person to submit paperwork because they received a 'notice to appear'. Officers explained these situations create frustration for people. Likewise, users reported that clearly scheduled time slots for their case and limit on adjournments was the main issues that would help them mitigate some of the barriers to access to justice including making the journey to the court office at the expense of time, work, and possibly care arrangement for children or other dependent. Additionally, Ms. Cassidy explained how the Courts Service was planning to modernise through simplifying and standardising civil processes, in addition to moving the entire process online.

Workshop B: *Access to Justice in Environmental Matters*

Moderator:	Professor Áine Ryall, University College Cork
Panellists:	Karin Dubsky, Coastwatch Justice Brian J. Preston, Chief Judge of the Land and Environment Court of New South Wales James Connolly SC, Chair, Planning, Environmental and Local Government Bar Association
Rapporteur:	Neasa Peters, Judicial Assistant

Objectives

The purpose of the workshop was to identify unidentified and unmet needs and to develop a roadmap to remove them. The workshop provided a forum for key stakeholders to discuss in more detail some of the issues affecting access to justice in environmental matters. The panellists gave short introductory remarks followed by discussion on questions submitted from the attendees.

The proposed talking points for the workshop were as follows:

- Where do people access accurate and reliable information about environmental rights and remedies?
- What is the current level of awareness of environmental rights and remedies?
- Barriers to access to justice in environmental matters e.g.:
    - fragmented and highly complex legislative framework;
    - difficulties in accessing expert legal and technical advice in a short timeframe;
    - high cost of environmental litigation and uncertainty around the application of the special costs rules;
    - lack of timely remedies.
    - whether effective and timely remedies are available in the case of threatened or actual environmental damage? Is the current system effective in preventing/remedying environmental damage?
    - Significance of current Government proposal to establish a Planning and Environmental Law Court? Insights to be gained from experience in other jurisdictions in terms of specialist environmental courts and tribunals?

Introduction

The Access to Justice in Environmental Matters Workshop was well attended with over fifty people joining the online workshop. The panellists were Justice Brian J. Preston, Ms Karin Dubsky and Mr James Connolly SC. The workshop was moderated by Professor Áine Ryall, University College Cork. Questions were submitted by attendees via the chat function on the Zoom platform.

Justice Brian J. Preston is Chief Judge of the Land and Environment Court in New South Wales, Australia. Justice Preston has been working in environmental law for 40 years. Along with others, he founded Australia's first public interest environmental law centre – the Environmental Defenders Office. He has lectured in environmental law around the world and has written extensively on environmental law, including access to justice.

Mr James Connolly SC has been practising at the Irish bar since 1975 and specialises in planning, environmental and local government law. He is Chair of the Planning, Environmental and Local Government Bar Association.

Ms Karin Dubsky is a marine ecologist working in Trinity College Dublin. She is an environmental activist, the coordinator and co-founder of Coastwatch Europe, an environmental NGO, and a member of the European Environmental Bureau.

Discussion

Please note that all opinions expressed are the panellist's individual opinions.

The discussion focused on eight key points:

1. Current Irish Landscape

Mr James Connolly SC and Ms Karin Dubsky gave an outline of the current Irish landscape for environmental law. Mr Connolly noted that in the last decade or so there has been a substantial increase in the number of challenges to planning permissions on grounds of alleged failure to comply with EU directives, particularly the EIA and Habitats directives. He highlighted the importance of providing adequate resources to planning authorities and An Bord Pleanála.

Ms Dubsky detailed the burden on NGOs and individuals to pursue environmental matters in Ireland and stressed the need for a complete review of the environmental law system and the need for a new system like that in New South Wales.

2. Access to information

Justice Brian Preston stressed the need for the reasons behind decision-making to be public. He said the public should have access to information at each stage and that pre-action discovery should be available in environmental law cases.

In New South Wales, the Court has been active in promoting public knowledge of laws and rights. It produces annotated statutes, a newsletter with cases, handbooks about environmental law, and runs education seminars and training programmes.

3. Public participation

The importance of public participation was highlighted during the discussion. Ms Karin Dubsky told attendees that new marine laws often appear to local people, fishermen and the coastal community without any consultation. She stressed that if you don't know that something exists, for example, the license for the harvesting of kelp in Bantry Bay, then you can't access the court and object to it.

4. Access to justice

(a) *Locus standi* - Justice Preston told of the system in New South Wales where rules have been introduced to liberalise standing and to allow access to the courts. Any person may bring proceedings, to remedy or restrain a breach of the law.
(b) Speed of court remedies - Ms Dubsky stressed that nature can be destroyed quickly with modern machinery and court remedies are not always available quickly in Ireland. Justice Preston told the attendees that there is a duty judge available 24 hrs a day, 7 days a week to hear applications for interlocutory injunctions in environmental matters in New South Wales.
(c) Costs – In Ireland, legal aid is only available in limited circumstances. Legal professionals who take these cases usually do so at a risk of not getting their costs paid if unsuccessful. In New South Wales there are special court rules protecting public interest litigants. In public interest litigation plaintiffs do not have to lodge security for costs, give an undertaking for damages to secure an interlocutory injunction or pay the other party's costs of the proceedings if unsuccessful. Justice Preston detailed various schemes which assist litigants in bringing environmental cases such as a duty lawyer scheme which can be accessed at the courts, a help desk for litigants in person run by a local university with students and a lawyer, and a link with the Bar Association for on call pro bono legal representation for litigants in person. The Court can also refer litigants to a public interest, environmental legal centre, the Environmental Defenders Office.

5. Using a variety of forums for dispute resolution

All panellists agreed that different mechanisms should be used and matched to the appropriate dispute. They spoke of using a variety of forums such as online, telephone, remote meeting platforms and onsite. They agreed that there should be individualised measures for cases, a bespoke tailoring of justice.

6. *SLAPP suits - Strategic litigation against public participation*

Justice Preston spoke about SLAPP suits which are designed to chill public participation and he said that in New South Wales they deal with these cases by bringing them on for hearing quickly.

7. *Independent Court Experts*

The panellists discussed the benefits of having independent court-appointed experts who report to the court for both parties and produce independent expert reports. It was acknowledged that in Ireland, our constitutional provisions and court structures may not allow for this, but there was a strong view that we cannot allow ourselves to be captured by our own legal culture and frameworks and that we must look outside the box and look at what a specialised court might look like for planning and environmental law. It was concluded that it is essential to have wide consultation around the idea of a specialised court.

8. *What measures are necessary to ensure that the proposed environmental court will deliver access to justice?*

Several points emerged during the discussion as regards measures that could potentially support access to justice in the context of the proposed new environmental court in Ireland including:

- Sufficient judges and adequate resourcing;
- Streamlining of procedures – onus on applicants to articulate their case on paper to allow for a mostly inquisitorial court;
- Alternative dispute resolution;
- Ensuring that judges with environmental knowledge and understanding are appointed - there is a need to look at the competence and expertise of judges, and a need to look at providing judicial training in this area;
- User or customer focus and engagement;
- Wide jurisdiction – civil, criminal and administrative;
- Court needs to develop a body of environmental jurisprudence;
- A setting of performance standards and monitoring performance against those standards;
- Court user group with every stakeholder to meet on a regular basis to evaluate and have a feedback loop;
- Independent court experts;
- Need for predictability and certainty around costs in environmental litigation;
- More resourcing for decision making and more availability of expertise at the decision making stage.

Workshop C: Legal Community Outreach: advancing access to justice through education and awareness

Moderator:	Attracta O'Regan, Solicitor, Head of Law Society of Ireland Professional Training
Panellists:	Mr. Justice John MacMenamin, judge of the Supreme Court of Ireland
	Katherine McVeigh BL
	John Lunney, Solicitor
	Maura Howe, Head of Media and Communications, Courts Service of Ireland
	Colin Smyth BL, Adjunct Lecturer, School of Law, Trinity College Dublin
Rapporteur:	Christian Zabilowicz, Judicial Assistant

The Legal Community Outreach workshop explored legal outreach, education and awareness initiatives.

The Hon. Mr. Justice John MacMenamin

Mr. Justice MacMenamin opened his presentation by discussing why outreach matters in a media age in the context of challenges to the rule of law posed by a lack of media pluralism and by populism as illustrated in many EU countries. He noted the importance of public trust in the judiciary and indicated that judges will administer the law independently and impartially. For this reason, legal outreach programmes run by the Judiciary aim to foster this trust by using creative ways to ensure the public who they serve understand what they do every day.

Mr. Justice MacMenamin explained that District, Circuit, High Court and Supreme Court judges deliver lectures and papers and participate in initiatives with third level educational institutions and community groups around the country and abroad on a continuing basis.

The judiciary also runs The Chief Justice's Summer Placement Programme where third level students can shadow a judge, attend hearings, and discuss cases with a judge to whom they are assigned.

In 2019, the Supreme Court launched the Comhrá ('conversation') programme which is a collaboration between the Supreme Court, the Courts Service and the National Association of Principals and Deputy Principals of Secondary Schools. This programme provides students with the opportunity to ask judges of the Supreme Court questions. He said that many had excellent cross-examinations skills.

Katherine McVeigh

Katherine McVeigh discussed the Bar of Ireland's Look into Law Programme. This outreach initiative provides 100 students from across the country each year with the opportunity to gain an insight into a barrister's day-to-day job and how the courts system works. Katherine explained how a minimum of 20% of places are provided to DEIS schools, with this reaching 40% in some years. This programme counts as a transition year work placement for secondary school students.

Katherine also discussed the changes that were introduced to the programme as a result of the Covid-19 pandemic. In 2021 the programme moved online and reached in excess of 12,000 students. Students were provided with eleven hours of online content which was prepared in advance for students to watch in their own time.

Reflecting on the pre and post-COVID programmes, Katherine welcomed the fact that the online programme drastically improved outreach particularly for those outside of Dublin who would otherwise find it difficult to attend the programme. The downside was that the programme was not able to facilitate any face-to-face interactions. Following the online programme, nearly 1,000 students provided feedback, with 64% of students saying that they were more interested in becoming a barrister and 77% saying that their understanding of the law had improved.

John Lunney

John Lunney's presentation focused on the Law Society of Ireland's Public Legal Education outreach programme based on the 'Street Law' method and the transformative potential of Street Law as a public legal education model.

John explained that Street Law is a public legal education initiative that involves law students and lawyers facilitating law-related workshops in schools and community settings. Access to justice is at the heart of Street Law and it is founded on the dual education goals of providing relevant law related education to meet community needs and to enhance the professional development of the law students and trainee lawyers who deliver the programme.

The Street Law programme empowers trainee solicitors through unique intensive induction training that aims to educate and empower the participating trainees so that they can later educate and empower their students around their legal rights, responsibilities, and options.

The multifaceted educational approach adopted by the Law Society has been shown to have short and medium-term social benefits, for trainee solicitors, the participating school pupils from local DEIS schools and prisoners, and for the Law Society itself.

Maura Howe

Maura Howe discussed the numerous initiatives run by the Courts Service that aim to educate younger people about specific areas of the Irish legal system, to empower them as active citizens, and to demystify the workings of the courts system and its terminology.

These initiatives include a school tours programme which involves students shadowing a barrister who guides them through the Four Courts, taking them to a courtroom where they enact a mock trial. The student jury decides on the verdict and the judge imposes a sentence. Court artists and budding court reporters are also encouraged. The Courts Service also provides tours to other interested groups around the country.

Maura discussed the Transition Year Work Experience programme, where Transition Year students participate in a week-long opportunity to observe both the courts and the Courts Service at work.

She described 'Let's Look at the Law' which is an educational module designed by the Courts Service in consultation with teachers, legal professionals, and the national coordinator for Civic Social and Political Education (C.S.P.E) at the Department of Education. It was designed to enable teachers, who have no previous knowledge of the law, to introduce young people to the law and the courts system in Ireland when they are teaching the C.S.P.E module of the junior secondary school cycle. An accompanying DVD resource supports this module. While primarily aimed at Transition Year students, interest in this programme has expanded to third level students, outreach groups and support agencies.

The Courts Service website also contains many information resources to demystify the justice system for the public.

Colin Smyth

Colin Smyth discussed the role that law students and societies play in advancing access to justice. Colin observed that making the legal profession more diverse does not necessarily promote access to justice if the students that go to law school simply absorb the norms of the legal profession. Instead, students should be sensitised to the law profession's problems. For this reason, Colin teaches a new module on the LL.M. course at Trinity College Dublin which is based on the clinical legal education teaching method.

Clinical legal education allows students to learn from experience. The idea is that students learn about human rights law through real legal interactions. Students see first-hand and reflect on some of the barriers to access to justice and they then propose ways to address those issues through strategic litigation.

Following the inaugural clinical legal education course, students commented that they were unaware of many of the barriers to justice and that, as a result of the course, they had a new appreciation of the importance of access to justice. Some have since expressed an interest in pursuing human rights-related careers. Colin noted that there is clearly an appetite for clinical education and that if, at the same time as improving access to law schemes, law schools introduce human rights to core legal education, more lawyers will have the skills to deal with access to justice issues.

Colin also discussed other outreach programmes operated by Irish universities in which law schools play an important role. These include: the Higher Education Access Route (HEAR) scheme which offers places on reduced points and extra college support to school leavers who are under-represented at Higher Education due to their socio-economic backgrounds.

He also discussed the access scholarships offered by the King's Inns, Law Society of Ireland and Trinity College Dublin Pathways to Law initiative.

These programmes aim to make the legal profession an accessible career choice for those who, due to their socio-economic background, would otherwise not have access. They also ensure that the legal profession and the judiciary are comprised of people who reflect the diversity of Irish Society.

Discussion

A discussion followed the presentations, which centred around the following questions:

1. As a consequence of running various outreach initiatives, what proof is there to show that these initiatives have led to improved access to justice?

Mr. Justice MacMenamin observed that many of the students that he has spoken to at the end of outreach workshops have commented that they were more likely to study law as a result. However, Mr. Justice MacMenamin said that he is more concerned with the broader question of the impact that outreach initiatives have had on people's understanding of the necessity of the rule of law. His concern is that outreach initiatives typically focus on increasing understanding of the law, and not necessarily the understanding of the role that the rule of law plays – which protects disadvantaged people just as much as it protects advantaged people. Mr. Justice MacMenamin explained that we must encourage lawyers to examine their conscience – and to prevent the law from being viewed as a way to make a good living as opposed to a way to achieve justice. Ultimately, Mr. Justice MacMenamin concluded that we need to see the law not only as a business but also as the weave that keeps society together, and to achieve that, everyone must have a stake in it.

Katherine McVeigh alluded to the difficulty of assessing the impact of outreach initiatives as ultimately access to justice is achieved through a layered approach –

building people's understanding of the law step-by-step. For example, Katherine estimated that 50% of the students for whom she has run outreach initiatives did not know that you could just walk into a court room.

From the perspective of Street Law, John Lunney said that he researches the transformative effect of the initiative by asking the question: how do the values of the trainee solicitors involved in the programme change after participating in it? John believed that it is a positive reflection of the programme that it has increased in popularity amongst trainee solicitors each year it has been running and that some trainee solicitors, following their participation in the programme, have left their firms and pursued other careers in more justice-focused organisations.

2. What roadmap would panellists propose to improve initiatives from an access to justice and rule of law perspective?

Mr. Justice MacMenamin responded that we should look at unmet need. There are many people that need legal advice and it is difficult to connect those that can provide advice and those that need advice. In this regard, Mr. Justice MacMenamin suggested that there should be a greater focus on time allocation – those that want to do work that improves access to justice should be able to do it.

Colin Smyth agreed with an earlier comment made by Mr. Justice MacMenamin that we need to examine our consciences. Colin suggested that we need to look at the role that lawyers play in perpetuating some of the barriers that exist. He explained that it is sometimes said that all lawyers are human rights lawyers – which, he says, is not true, but it should be. In terms of a roadmap, Colin noted that, from his perspective, he would like to facilitate the mainstreaming of practice human rights courses taught through clinical legal education. He also believes that law schools should consider adopting a national strategy whereby issues of access to justice are included in the core syllabus of legal education.

Workshop D: Accessibility of Courts: court procedures and legal representation

Moderator:	Mary Carolan, Court Reporter, Irish Times
Panellists:	Gráinne McKeever, Professor of Law and Social Justice, University of Ulster
	His Honour Judge Francis Comerford, judge of the Circuit Court
	Gary Lee, Solicitor, Ballymun Community Law Centre
	Turlough O'Donnell SC
	Eamonn Conlon SC, Solicitor, arbitrator, mediator
Rapporteur:	Ciara McGrath, Judicial Assistant

The workshop began with short opening remarks from each of the five panellists.

Gráinne McKeever

Gráinne McKeever, Professor of Law and Social Justice, University of Ulster began her remarks by outlining the recent study she had undertaken, *Litigants in person in Northern Ireland: barriers to legal participation*. The study found that the barriers to effective participation of litigants in person in legal proceedings could be categorised as:

1) Intellectual – lack of understanding of the legal process;

2) Practical – not being able to access support as information available to litigants in person on the legal process can be insufficient and cobbled together from various and unreliable sources. The cost of the process is another practical barrier;

3) Emotional – the process itself can cause upset, frustration and anger; and

4) Attitudinal – stereotypes of litigants in person are they are difficult to deal with and disruptive to the system. Distrust of the system is also a factor.

Professor McKeever suggested three options to resolve the issues that litigants in person face in the current legal process:

1) "Give them a lawyer" - Ensure that litigants in person have adequate access to a lawyer

Challenges involved in this option include the cost involved and resistance of litigants in person who wish to represent themselves.

2) “Make them lawyers” – Provide reliable and easily accessible information on the process

Challenges associated with this option is that the knowledge and education barriers are high.

3) Change the system.

Challenges associated with this option are around the potential costs (though not cost neutral to do nothing), the lack of system agility and the need for cultural and behavioural change.

Turlough O’Donnell SC

Mr O’Donnell outlined his involvement in the Voluntary Assistance Scheme which is the pro bono scheme of the Council of The Bar of Ireland established in 2004. Under the scheme, legal assistance is provided to charities and civil society organisations and, in some instances, to individuals in their capacity as clients of such organisations. Mr O’Donnell emphasised that the importance of the scheme was not merely the provision of legal assistance but that, through the channel of the organisations involved, engagement could be created with traditionally hard to reach members of the community. He observed that sometimes the issue is not just that people cannot gain access to their rights but that they do not know or believe that they have them.

Gary Lee

Gary Lee spoke about his work as managing solicitor of Ballymun Community Law Centre. Prior to the establishment of the centre in 2002, no solicitor firms served the area of Ballymun which, he commented, illustrates the challenges of access to justice the people of the area face. The centre mainly provides assistance in areas of law which are not covered under the Civil Legal Aid scheme. Mr Lee emphasised that vulnerable clients can often have complex and wide-ranging needs and may need assistance in multiple legal areas. He noted that often the lack of cohesiveness and communication between various state services which are in place to assist citizens can exacerbate the problem. Mr. Lee indicated that 70% of the centre’s clients are identified as having some form of disability.

Ballymun Community Law Centre aims to dispel the belief of some of its clients that the law exists as a weapon to be used against them rather than bestowing enforceable rights upon them. He suggested that the provision of legal education and training is an

important facet to the approach of the centre. Mr Lee suggested four steps which are essential in ensuring that the legal system is accessible: 1. Engage; 2. Inform; 3. Advise; and 4. Represent.

Eamonn Conlon SC

Mr. Conlon's central message was that simplification is the most important thing that can be done to improve the accessibility of the court system. The role of lawyers themselves in increasing accessibility to the courts is important. He said that all those who work in law are aware of the inequity that can occur within the system, and that it is incumbent upon them to play a role in realising access to justice.

Mr. Conlon suggested that it is important that lawyers maintain a focus on the simplification of the court process for their clients. He observed that, even when unnecessary legal jargon is pared away, terms which may appear ordinary to a legal professional may not be to a lay person. Mr Conlon commended the Law Society's "Solicitor's guide to clear writing" initiative in that respect.

Mr Conlon also suggested that an increased reliance and openness to alternative dispute resolution would be helpful in increasing the accessibility of the court system.

His Honour Judge Francis Comerford

Judge Comerford first outlined his membership of the Review Group which produced the report entitled "Review of the Administration of Civil Justice" which was published in December 2020.

Judge Comerford expressed a view the extensive involvement of litigants in person in the legal system is not best for the system. In his opinion, the best method of increasing accessibility of the courts would be to increase access to representation and that no proceedings should involve a litigant in person simply because they are not able to access legal representation.

He suggested that rules of legal proceedings must apply equally to everyone.

Discussion

During a general discussion, Professor McKeever made the point that there is an issue with viewing litigants in person as intruders in the legal system and questioned who the system is for if litigants in person are intruders. She suggested that the system must not be one which is designed by lawyers for lawyers. Professor McKeever suggested, in a variation on the adage that hard cases make bad law, that exceptional

cases make bad policy and if the small proportion of persistent, querulous litigants in person, and the disruptive nature of such proceedings on the efficiency of the legal system, are allowed to influence the design of the system, that would not be a good outcome. Judge Comerford emphasised the importance of the fairness of the end result of legal proceedings and suggested that this is what the system should ensure and protect.

The discussion also centred around the following questions:

1. What reforms should be made to promote accessibility?

Eamonn Conlon answered that currently there is a gap in the provision of legal aid as there is no right to legal aid if a person has proceedings before a tribunal. He observed that this gap is especially impactful because it is often the most disadvantaged and vulnerable citizens who have reason to take a case before a tribunal. He also said that the most integral issue is working to ensure there is no truth to the belief that the law is something to be used against members of the community and then creating engagement to show how it can be used to assist.

Gary Lee responded that provision of legal education should be reformed. If there is no awareness of legal rights the law cannot be accessed and used to help. He said that this could be done through the provision of state funding for legal education and an increased focus on community law centres.

Turlough O'Donnell suggested that all documents and rules should be available in plain English.

2. Are there accessibility issues associated with remote hearings.

Professor McKeever and Judge Comerford were of the view that remote hearings can create an issue where an applicant may not feel they have been heard properly like they would if they had experienced a physical hearing. Other views expressed in response to this question were that when there is no other option, as was the case during the pandemic, remote hearings work fine but in general is can be an unsatisfactory experience for litigants in person as it impacts upon the humanity of the process. Moreover, current remote hearing technology and platforms are makeshift and cobbled together, a response to an emergency situation, going forward investment and dedicated systems would be required to ensure a fit for purpose and accessible remote option.

It was also suggested that remote hearings create a danger of exacerbating the "digital divide" and creating further accessibility issues. Many participants in court proceedings may not have access to the necessary technology or technological literacy to participate in remote hearings.

Workshop E: Access to Legal Services for People in Poverty and Disadvantaged Groups

Moderator:	Philip O'Leary, Chair, Legal Aid Board
Panellists:	Marc Willers QC
	Brian Killoran, CEO, Immigrant Council of Ireland
	The Hon. Ms. Justice Mary Laffoy, Chair, Sage Advocacy
	Tricia Keilthy, Head of Social Justice and Policy, Society of St. Vincent de Paul
Rapporteur:	Heather Burke, Judicial Assistant

The topic for Workshop E was access to legal services for people in poverty and disadvantaged groups. A panel of four highly regarded speakers with expertise on access to justice issues within different disadvantaged groups of people was assembled, and the workshop was chaired by Phillip O'Leary, Chairperson of the Legal Aid Board.

He began the workshop by requesting that panellists and participants alike focus on the end user in legal services, which, in the case of this workshop, was the person living in poverty or in other disadvantaged groups.

Mark Willers

Mr O'Leary introduced the first speaker, Marc Willers QC, a member of Garden Court Chambers and of the Irish Bar, who specialises in human rights and discrimination law, with a focus on Gypsy, Roma and Traveller law.

Mr Willers described the discrimination faced by these disadvantaged groups in all aspects of their lives, from housing to education, and remarked on the Irish Human Rights and Equality Commission's Report that found that Travellers were ten times more likely to experience discrimination when applying for work. He emphasised that though his work and research was based primarily in the UK, nearly all the findings could be translated to the Irish context as almost identical discrimination and hardships are faced by these groups in both jurisdictions.

Mr Willers addressed how Travellers, Roma, and Gypsies experienced the justice system in Ireland. Firstly, he voiced his concern at the absence of availability of legal aid for racial hate speech claims, and recommended that these be brought within the scope of the Legal Aid Board. He continued, explaining that barriers to access to justice were not only the costs associated with legal claims, but included systemic barriers, such as the complexity of the law, the low levels of literacy amongst members

of these disadvantaged groups, and digital exclusion which many Travellers, Gypsies and Roma experience by not having equal access to internet and technology services.

Mr Willers then turned to address what is being done at the moment in Ireland to improve access to justice for these groups. He mentioned the work of FLAC, including the launch of the dedicated Traveller Legal Service, though he warned that having only one dedicated solicitor providing this service would not be enough. He spoke about the Traveller Equality and Justice Project, a collaboration between UCC and FLAC, in which he is involved, as well as the work of the IHREC and Mercy Law Centre.

Mr Willers sought to answer the question of 'What more can be done?' to further advance access to justice amongst Travellers, Roma, and Gypsies. He argued that more funding is needed for local law centres so that advice can be provided at the local level, and suggested that the Legal Aid Board consider funding a Traveller advice helpline, based on a model in place in Birmingham, England, which worked well. He suggested that more guidance materials on the form of the law should be available to Travellers, and that training sessions for lawyers, public servants, and NGOs on Traveller rights ought to be implemented.

Mr Willers finished his talk by referencing both the economic argument and the moral argument in investing in access to justice. For every euro spent on improving access to justice, there is, based on recent Canadian research, a potential €9-€15 return. And morally, how we treat the most vulnerable in society, those being Travellers, Roma, and Gypsies, is a litmus test on how our society functions and how it cares for its people.

Brian Killoran

Mr Killoran introduced three main themes he would follow during his talk: the need for migrant communities to have access to mainstream free legal aid in the area of migration support; the need for access to legal aid to be sensitive and attuned to the needs of migrant communities; and the need for reform of the current process of accessing legal aid for international protection applicants. He argued that it is important to support migrants in the process of applying for residency status or family reunification, especially when their rights are unclear or contested, through free legal aid. The issue of unregulated 'immigration consultants' poses a threat to migrants' legal rights, and free legal aid would enfranchise migrants to fully develop professionally and educationally in Ireland.

Mr Killoran addressed the need for legal aid to be attuned to the specific cultural, gender, and linguistic differences in migrant communities, and questioned the usefulness of a 'one-size-fits-all' approach. He noted the importance that legal aid staff be trained on the needs of migrant women and girls who have been trafficked to Ireland, for example, and stressed how impenetrable legal language can be for those

who do not have English as a first language. Moving on to discuss access to justice issues relating to international protection, he pointed out the terrible delays endemic in the system, and the huge workload that legal practitioners must go through for just one international protection application. The need for reform in this area is critical, he said, and suggested a model of early legal intervention as proposed by the Irish Refugee Council. He pointed out that asylum appeals to the High Court were costly, and that the State would be better spending its money by providing proper legal aid to asylum applicants.

Mr Killoran added that he had not had the time to even discuss racism and discrimination against migrants, but noted the huge connections between many of the access to justice issues discussed in the workshop. He ended on a note that no one person can figure out these issues independently, but that together, we can create a vision and plan to move forward.

Ms. Justice Mary Laffoy

Ms Justice Laffoy began her talk by introducing the work of Sage Advocacy in relation to the disadvantaged group consisting of vulnerable adults and older people, whose rights and dignity it promotes, protects, and defends. She spoke about the systemic issues within the justice system that make it difficult for this disadvantaged group to access and achieve justice. Elderly and vulnerable people have particular challenges facing them in the context of legal and justice issues. She discussed the Issues Paper, published in 2019 by the Law Reform Commission, of which she was President, on its project on “A Regulatory Framework For Adult Safeguarding”. What the Issues Paper emphasised was the need for the framework to be rights-based, with a proper balance achieved between empowerment and protection. What Sage Advocacy offers is an independent advocacy service for elderly and vulnerable people, for example in the context of home care, healthcare, and nursing home care. Advocates are free from any conflicts of interest, and have specialist knowledge in relevant areas.

Ms Justice Laffoy discussed the Assisted Decision Making (Capacity) Act 2015. The Act marks a huge leap in the right direction in how vulnerable people’s legal rights are to be respected, with a key underlying principle being the presumption of capacity. Ms Justice Laffoy noted, however, that unfortunately most of the provisions of the Act have yet to be commenced. In terms of how to improve access to justice for older and more vulnerable adults, she suggested that a statutory provision for independent advocacy be introduced.

She highlighted that the recent experience from advisors within Sage Advocacy is that lawyers and judges are now recognising the need for vulnerable adult litigants to have the assistance of a support person as well as a lawyer for court proceedings. This is a strand of access to justice which requires consideration, in Ms Justice Laffoy’s experience, and one which she hopes will be taken on board by the Working Group on Access to Justice.

Tricia Keilthy

The final speaker of the workshop was Tricia Keilthy, Head of Social Justice and Policy with the Society of St. Vincent de Paul (SVP). Dr Keilthy began her talk by offering some information on SVP and the work that it does in visiting people's homes and providing support for those facing financial difficulties and social exclusion. 70% of calls to SVP are from households with children, and one parent families are consistently the largest group assisted by SVP. Though the primary issues which volunteers encounter are issues such as energy poverty, utility arrears, education costs, and food poverty, what is often in the background are legal issues, involving family law, housing issues, domestic violence, and debt.

Dr Keilthy described how an inability to access legal services can be both a result and a cause of poverty. People in more vulnerable living situations often have more legal issues than other groups, and the cost of legal services often results in further financial difficulties for families. She emphasised that experiencing poverty will also be compounded with other difficult issues such as exclusion and discrimination.

Beyond the up-front costs that accessing justice requires, Dr Keilthy highlighted the hidden costs that those living in poverty will often find difficult to meet. The costs of transport to courthouses and solicitors and the costs of childcare are examples of these hidden costs. Furthermore, delays in hearing dates can compound these costs; a family may spend €100 for a court appearance, only for the hearing to be adjourned last minute.

Dr Keilthy mentioned the work that SVP does on this front, making referrals to FLAC, Community Law and Mediation, and Mercy Law. SVP also provides direct financial support to people experiencing financial difficulties arising from legal costs. In terms of solutions that Dr Keilthy and SVP envisage to improve access to justice for people living in poverty, better and more research to understand the pathways through legal aid for people on low incomes is needed. She voiced support for a review of the civil legal aid scheme in Ireland, and suggested that the Reasonable Living Expenses framework that insolvency services utilise could be adopted by the Legal Aid Board and even the Courts Service to ensure that people are not sacrificing their minimum needs due to legal costs. Legal Aid should also be expanded to cover more legal issues that affect people living in poverty especially, such as housing and homelessness. She ended her presentation by emphasising that access to justice is also an anti-poverty issue.

Discussion

Throughout the presentations, participants on the Zoom call had been sending in their questions and comments on the subjects discussed. Mr O'Leary posed the first question to the panellists: a theme had emerged in the presentations that 'clusters of injustices' often occurred for people living in poverty, with a snowballing effect of the

problems leading people to even more disadvantaged positions in relation to access to justice. What had the panellists to say on this situation?

Mr Willers agreed that this theme was really important, and that no one problem could be isolated from others. In the case of Travellers, for example, environmental impacts caused to them by their precarious living situations causes issues relating to Article 3, 8 and 14 of the European Convention on Human Rights, and that these problems coincided with other problems caused by discrimination, such as housing rights, and health. He reminded the audience that it is much more cost effective to address issues at a local level, rather than waiting for a case to be brought to the High Court of the European Court of Human Rights.

Mr Killoran spoke of his experience that migrants have with compounding problems. He mentioned that those that come to the Immigrant Council of Ireland are coming to them because they have a problem or problems, and that it was his experience that the legal and personal problems were often related. He regarded the cluster of injustices as requiring a multi-dimensional solution, suggesting that someone with an international protection background will not only need legal aid, but also perhaps counselling for psychological support.

A question was posed to Ms Justice Laffoy regarding the regulation of independent advocates whose job it is to canvas the rights and interests of elderly and vulnerable people. She agreed that if a statutory scheme is introduced, that the work would have to be monitored, and stressed that there must be a registered panel and a testing process, especially when dealing with vulnerable individuals.

Another participant asked Dr Keilthy about the digital divide facing those living in poverty, and how that had been exacerbated in the pandemic. She described how many families did not have digital devices to enable to switch to online learning, and how the closure of high street stores impacted people who did not have access to online shopping. Similarly, the move to virtual hearings in the courts proved difficult for some people. However, other costs such as transport and childcare were greatly reduced by the move to remote services.

As to the review of civil legal aid promised by the Government, Mr O'Leary anticipated that the Review Body would reach out to all parts of civil society, including NGOs, services users, and people who are not currently users because they cannot access legal aid.

Workshop F: Equal Treatment in the Court Process

Moderator:	David Fennelly BL, Assistant Professor of Law at Trinity College Dublin.
Panellists:	Robbie Sinnott, Activist for Human Rights of Disabled People. Susan Kennefick, Senior Policy and Public Affairs Advisor, National Disability Authority. Dr. Fiona Donson, Director, Centre for Criminal Justice and Human Rights, University College Cork. Fiona Donnelly, Queens University Belfast. Bashir Otukoya, Assistant Professor, School of Law and Government, Dublin City University. Sinead Gibney, Chief Commissioner, Irish Human Rights and Equality Commission. Judge Tamara Lewis, Employment Tribunal Judge, United Kingdom. Ms. Justice Mary Irvine, President of the High Court of Ireland.
Rapporteur:	Janet Yennusick, Judicial Assistant

Mr. Fennelly opened the workshop by noting that equality underpins the legal system and society as a whole. He observed that, while equality is a principle which is familiar to lawyers and citizens, it can be taken for granted. If Article 40.1 provides a constitutional guarantee for equality before the law, there was nonetheless a need to tease out what equality means for the court process in practice.

Robbie Sinnott

The first speaker of Workshop F was Mr. Robbie Sinnott, advocate and campaigner for the rights of disabled people who campaigned for the inclusive voice of people with visual impairment. He reflected on what it means to be disabled, specifically the language and terminology surrounding disabilities. Though international frameworks refer to ‘people with disabilities’, Mr. Sinnott believes that ‘disabled people’ is a better term to use.

He considers disability to be a social construct. People are born with adversities but are disabled by attitudes, designs, plans and policies. Mr. Sinnott reflected on the issues faced by disabled people on a daily basis, which he believes is evidence that an equality of arms does not exist. A huge obstacle to accessing justice is finding legal

representation that understands the needs of visually impaired people. Where a visually impaired person is involved in court proceedings, and handwritten documents are produced which have not been converted into an accessible format (e.g. Braille/DAISY), the person is not in a position to read or access them. He noted that over 75% of persons who are blind are unemployed, and consequently, cannot afford legal representation. Mr. Sinnott also noted that fora such as the Workplace Relations Commission ('WRC') and the Residential Tenancies Board ('RTB') are virtually inaccessible to blind people in practice, not only because the civil legal aid system does not provide representation for these types of proceedings, but also because handwritten and other documents must be translated into screen text. He regarded this as 'institutionalised discrimination'.

Mr Sinnott concluded by stating that Disabled Persons Organisations (i.e. "representative organisations" as defined under the Convention on the Rights of People with Disabilities (Article 4(3) and General Comment no. 7)) need to be prioritised in consultations regarding the accessibility of courts.

Susan Kennefick

Ms. Kennefick began her talk by tracing the history of the National Disability Authority ('NDA') which was established in 2002. Ms. Kennefick highlighted the existing obligations imposed on public bodies, including the Courts Service, under the disability and sign language legislation. She referred to a review conducted in 2019 which identified a lack of awareness in the public sector of its duties. She emphasised the need to drive more awareness of these obligations within the public sector. In relation to the Courts Service, she said that section 25 of the Disability Act 2005 mandates that courthouses must be physically accessible. She observed that the more modern courthouses are designed with this in mind and that the NDA welcomes the modernisation programme within the Courts Service. She also noted that section 29 of the Disability Act 2005 makes provision in relation to protected/listed buildings. Ms. Kennefick said that there has been a recent embracing of technology due to Covid-19. She gave the example of changes to the NDA website so that it is more accessible and offers guidance on its website in an accessible format. In 2002, the NDA advocated for a standardised system that would help people with disabilities from the very beginning of their involvement in the justice system and not only when it proved necessary in the course of particular proceedings.

Ms. Kennefick indicated that there has been a welcome introduction of preliminary hearings in 2021 which is important for intermediaries in the justice system. She expressed the view that courts must ensure that a person who wants a matter to be conducted in Irish is facilitated. Ms. Kennefick noted that, although Irish Sign Language (ISL) is provided for in the courts system, and has resulted in a more robust support for hearing impaired persons, there is room for improvement. The NDA welcomes the introduction of a Judicial Studies Committee. She mentioned a number

of significant changes to the system, such as the phasing out of the Wards of Court system (with over 2,500 wards), the commencement of the Assisted Decision Making and Capacity Act 2015 in 2022, and the provision of more support for the victims of crime. Finally, Ms. Kennefick advocated for a more co-ordinated and collaborative approach to data sharing amongst the various justice entities.

Dr. Fiona Donson

Dr. Donson is the Director of the Traveller, Equality and Justice Project which is funded by the European Union's Rights, Equality and Citizenship Programme (2014-2020). She highlighted the daily discrimination faced by the Traveller Community when accessing goods and services. While wider society may take access to such services for granted, discrimination in this context was the lived experience for many members of the Traveller Community. She emphasised that, where access to justice is inaccessible to one community, this amounted to discrimination. Dr. Donson referred to the Equal Treatment Bench Book in the UK and data collected by the Cork Traveller Women's Network which found that there are many barriers to justice, ranging from accessing legal services (particularly in equality matters, which are not a priority and not covered by Civil Legal Aid), legal costs and a fear of discrimination in court. She said the justice system design is inherently flawed and impenetrable to the Traveller Community. She noted that Travellers have a deep distrust of the justice system, and referred to difficulties faced by the Traveller Community due to unclear redress avenues, such as the abolition of the Equality Tribunal and the reversion of equality matters to the District Court. This is particularly acute because some members of the Traveller Community believe they will be discriminated against in a court room.

Fiona Donnelly

Ms. Donnelly focused on what a person - such as a child with Autism, speech difficulties, learning difficulties, mental health and/or any combination of these - may experience when they go to court or try to access justice. She indicated that Autism affects how a person makes sense of the world around them. In court, people with Autism are asked to communicate and make sense of the events that took place. However, their processing may stop when, for example, an accused person walks into the courtroom, and the person with Autism may not know how to act or what to do or how to think. She observed that a child with Autism grows into an adult with Autism and not into a unified identity (i.e. that it is harder to identify adults with Autism).

Ms. Donnelly expressed her belief that the justice system should be 'vulnerability agnostic'. She suggested that we must think differently of people who think differently, and ask ourselves what these people think of as 'neurotypical'. Ms. Donnelly suggested that, in doing so, awareness would be raised and the standard of questions improved. She suggested that there are four things that can be done in this regard: (i) to think differently of people who think differently; (ii) to make small adjustments; (iii) to make a difference; and (iv) to learn to ask.

Bashir Otukoya

Mr. Otukoya began his talk by referring to the foundation of equality in Article 40 of the Constitution. Mr. Otukoya believes that it is important to revisit Article 40 and to try to understand what is meant by equality. Our understanding of equality is, he suggested, one of 'sameness' which is the idea that everyone is the same when it comes to the law. While this may have been understandable given the homogenous ethnographical landscape of Ireland at the time when the Irish Constitution was drafted, he observed that, in modern Ireland, not everyone is the same and, where there is diversity, there is a power struggle, and minority groups are placed at a disadvantage. He suggested that, when there is a lack of diversity in law firms and law schools, future judges have fewer diverse experiences and therefore perspectives.

Mr. Otukoya recalled that, when working as a Judicial Assistant assigned to Ms. Justice Donnelly, she spoke about the need for diversity in the system. She once told him that 'you can't be what you can't see' when referring to the need for diversity. Mr. Otukoya said that migrants are often told that they could remain in Ireland on the condition of being and remaining of 'good character', without any definition of what this means, which is the same as telling a child to 'be a good boy/girl in school'. Mr. Otukoya highlighted that there are countless examples where the nationality of a person was mentioned in a hearing despite it being irrelevant to the hearing itself. This then suggests, as Mr. Otukoya put it, that justice might be skewed where the decision is influenced by prejudice associated with the person's nationality, or that the person is underserving of justice. This may be perceived as discriminatory and xenophobic, and has the potential to dissuade people of that nationality or from ethnic minority backgrounds, or dual-Irish citizens, from engaging with/in the legal profession.

Mr. Otukoya highlighted our common humanity but also our differences: with this, comes inherent biases which can affect our attitude, behaviour and perceptions of others, thereby influencing our decision-making.

Sinead Gibney

Ms. Gibney mentioned the Irish Human Rights and Equality Commission's Second Strategic Statement 2019-2021. She noted the significant developments stemming from the positive statutory duty on public sector bodies in terms of accessibility, which could result in more equality of opportunity and better outcomes for all. She spoke of the value of the public sector duty for the courts and the way in which the duty can facilitate the Courts Service and other similar bodies in adhering to their human rights and equality obligations in a systematic way when developing plans, policies and services. She believes that such proactive compliance with this duty could have a transformative effect on mainstreaming access to justice for all. She suggested that the question of how human rights and equality could be embedded into the courts system must be self-assessed in the first instance. For example, the Irish courts system must assess and improve accessibility for people with disabilities from a user-centric perspective. She also pointed to the gaps in respect of children and the need

for ongoing review, taking account of the fact that user experience varies from user to user. She echoed Mr. Otokoya's reference that 'you can't be what you can't see' adding the phrase 'nothing about us without us' in the context of participation in public sector duty. She said that training and capacity building must be introduced for those working in the justice field in relation to accommodating the bespoke needs of users such as those with a different linguistic backgrounds, lone parents, persons with diverse disabilities, children and so forth.

Judge Tamara Lewis

Judge Lewis reflected on the development of the Equal Treatment Bench Book in the UK which was first created over 30 years ago. She served as the editor of the 2018 and 2021 editions, which are available online as open source resources. The Bench Book was designed and written by judges for judges at all levels and for all areas of law, including tribunal judges. Judge Lewis described it as a 'living document'. The purpose of the Equal Treatment Bench Book is to encourage effective communication and to assist judges in making appropriate provision for people with bespoke needs in a court setting so that everyone can participate fully. She said that the accessibility of the Bench Book invites and encourages submissions, suggestions and criticisms for its ongoing improvement.

Judge Lewis gave as an example the practical suggestions in the Bench Book's Disability Glossary entries on Autism and Stammering. These were written with the help of the national specialist organisations. By way of example, the Glossary notes that some people with Autism may be uncomfortable sitting next to a door or directly in front of another person in court. Consequently, she now always asks a person if they are comfortable with where they are sitting before proceeding with a hearing. She noted, by way of further examples, that specific practical provision may need to be made for pregnant women, participants with childcare needs and persons with different religious backgrounds and so forth. Judge Lewis said that the book was intended to be a practical aid for judges. She mentioned the issue of 'language acceptable terminology', and the importance of increasing judges' awareness of what is or is not considered acceptable by the relevant communities.

Judge Lewis said that people who experience day-to-day discrimination may not trust the court unless the judge oversees the conduct of the proceedings in such a way that makes them feel comfortable. By way of example, she referred to members of the Traveller or Roma communities, who may feel that a court will not take them seriously. It is important in these circumstances that judges are aware of this problem to foster confidence in members of these communities in the court.

President of the High Court, Ms. Justice Mary Irvine

Closing the workshop and offering final remarks was President of the High Court, Ms. Justice Mary Irvine. She addressed three items: physical barriers to justice; judicial training; and lessons learned from Covid-19 and how to ensure equal treatment for disabled people.

As regards physical barriers, President Irvine suggested that it was important to note that everyone coming to the courts has different levels of understanding regarding the legal process. Hence everyone has bespoke personalised needs. She said that the Courts Service recognises this fact, facilitating and supporting access to justice by acknowledging the personalised nature of individual needs, be they physical, cognitive, intellectual or other needs. This involves providing easy access to information on the system generally as well as information on how persons can get specific assistance where required.

As regards judicial training, and the continuing education of judges, President Irvine noted that Ms. Justice Gearty is the Director of Judicial Studies and leading the ongoing work on judicial training in light of international best practice. The focus to date has centred on immediate matters such as onboarding new judicial appointments with dedicated induction training. This training is also available to existing judges.

In August 2021 members of the Judiciary attended training in the area of trauma. Contributions were made by the Dublin Rape Crisis Centre and Dutch judicial training colleagues on measures designed to avoid retraumatising victims of rape in court.

This also included specific training on unconscious bias and how to assist and enable witnesses in court. President Irvine noted that everyone has unconscious biases and that it was important to learn how to avoid them in court.

Finally, as regards lessons learned from Covid-19, she noted that whilst the pandemic was devastating for all, lessons have been learned from it. She noted the amount of work on remote platforms which were introduced at remarkable speed in order to facilitate access to justice. Her own experience was that remote hearings had greatly benefited wards of court. Prior to the pandemic, wards tended not to come to court. President Irvine has found that, through the facility of remote technology, people in wardship can talk to her, express themselves, and communicate their opinions/fears to her. She has found this superior to the physical courtroom experience. President Irvine suggested the remote hearings should be an option available to litigants in a tick-box fashion.

In concluding the workshop, President Irvine noted that the courts have learned a lot and can bring a lot forward into the future.

Plenary session: overview of key points arising out of workshops led by the moderators

Chair:	Gerry Whyte, Professor of Law, Trinity College Dublin
Rapporteur:	Claire Barry, Judicial Assistant

Professor Gerry Whyte, School of Law, Trinity College Dublin, chaired a plenary session which brought together the moderator of each breakout workshop to provide a very brief overview of the key issues which arose in each workshop.

Workshop A – Awareness and Information

Sinéad Lucey, managing solicitor in FLAC (Free Legal Advice Centres) and the moderator of Workshop A, summarised the main aspects of the workshop as follows:

Michael Owens of the Citizens Information Board (CIB) went through the variety of services funded and supported by the statutory body, which address issues relating to COVID, mortgage problems, and unemployment. He provided various statistics about the reach of these services, emphasising in particular the impact of the Citizens Information website on providing access to plain-language legal information, which was accessed by over 15 million users in 2020, with the 'Justice' section of the website being accessed over 1.5 million times that same year. He also stressed the importance of face-to-face services and specialised services. Mr. Owens highlighted the need for specialised services in certain communities of need, mainly persons with disabilities and Travellers. He said that the local Citizens Information Services support individuals to understand their rights, and empower individuals to vindicate their rights before the need to go to a solicitor, thus promoting early access to effective information and lay-advocacy services in the first instance.

Representatives of two independent law centres also spoke in Workshop A: Rose Wall, CEO of Community Law and Mediation (based in Coolock, Dublin and in Limerick) and Mark Benton QC, CEO of Legal Aid BC in British Columbia. Ms. Lucey reported that in the Community Law and Mediation centre, the approach is very much to focus on community legal education and that the centre goes out into the community to educate people about their legal rights. They do this by going to where the community is such as attending libraries and family resource centres. They empower communities through legal intervention.

Ms. Lucey noted that Legal Services in British Columbia is an interesting model. It is a mixed statutory service and independent law centre. It reaches ten times more people through providing information than it does through providing legal services. It delivers information in a range of formats including using visual information not just text.

Ms. Lucey reported that Ray Byrne, former full-time Commissioner at the Law Reform Commission also spoke in Group A, outlining the importance of modernising and democratising legislation so that it is accessible to everyone.

Marianne Cassidy, Head of the Civil Reform stream of the Courts Service's Modernisation Programme spoke of the cultural change happening within the Service, and of how of it is modernising the system so it is accessible to users and in particular lay users.

Colleen Dube, CEO of the National Adult Literary Agency emphasised the importance of awareness of literacy deficits in society, the importance of using plain language when dealing with legal issues, and moving away from 'legalese'.

Finally, Sinéad Lucey reported that the digital divide was also discussed in Workshop A, including the importance of bearing in mind that not everyone is digitally literate, and that this could be a barrier to access.

Workshop B – Access to Justice in Environmental Matters

Professor Áine Ryall, University College Cork moderated Workshop B and provided the following overview of the key issues which arose during the session.

Justice Brian Preston, Chief Judge of the Land and Environment Court in New South Wales, Karin Dubsky of Coastwatch, and James Connolly SC, Chair of the Planning, Environmental and Local Government Bar Association were panellists in this workshop. The workshop gave rise to three main points in relation to access to justice in environmental matters.

First, when considering potential reforms in this field, including the establishment of a specialist planning and environmental law court, it is important not to be captured by our particular legal traditions and administrative culture. It is important to challenge assumptions and to think outside the box when considering what form a new specialist court might take. It was agreed that wide consultation on any proposal for a specialist planning and environmental law court would be essential to ensure that people felt involved from the outset. Insights provided by Justice Preston highlighted the importance of inter alia: strategic vision, a consumer focus, systems thinking, judicial training, efficiency and process, including a potential role for alternative dispute resolution (ADR).

Professor Ryall reported that the second key takeaway from Workshop B was the importance of the provision of information regarding rights and remedies to the public. The importance of clear and accessible information and access to jurisprudence was discussed, as well as the benefit of friendly, accessible entry points.

Finally, the issue of costs was discussed. The participants in the workshop emphasised the importance of certainty on potential liability for costs and on the, quantum of such costs, and judicial training.

Workshop C – Legal Community Outreach: advancing access to justice through legal education and awareness

Attracta O'Regan, Solicitor and Head of Law Society of Ireland Professional Training moderated this workshop, which dealt with outreach, education, and awareness issues.

Mr. Justice John MacMenamin led a discussion on why outreach is important, particularly in this media age we live in, because it is essential that there is public trust in the judiciary and the judges themselves, and that the public trust in the administration of law independently and impartially. He emphasised that it is through outreach that this trust can be fostered. Judges are working to nourish this trust by delivering lectures and participating in initiatives, such as the Comhrá programme which was launched by the Supreme Court in 2019. Comhrá ('conversation' in the Irish language) is a collaboration between the Supreme Court, Courts Service and the National Association of Principals and Deputy Principals which provides secondary school students with the opportunity to talk to judges and ask them questions.

Katherine McVeigh BL discussed the Council of the Bar of Ireland's outreach through its 'Look Into Law' programme. This began as a programme under which 100 secondary school students were given the opportunity to gain insight into a barrister's job and the role of courts. This number of pupils included about 30 to 40 students from DEIS (Delivering Equality of Opportunity in Schools) schools. In 2021, the programme was moved online, which increased the access to the programme to over 10,000 students. This online access removed geographical barriers, which opened the door to a wider range of students.

John Lunney gave an overview of the Law Society's outreach programme which focuses on public legal education, and the "street law" method. This involves facilitating legal workshops in a community setting. This programmes also gives law students professional development opportunities, thus providing a social benefit for the Law Society and trainees.

Maura Howe, Head of Media and Communications in the Courts Service noted that the Courts Service is continuing in this vein by educating younger people to be empowered to be an active citizen and to take out the mystery surrounding the law and the legal system. The Courts Service does this by providing school tours and work experience opportunities for fourth year students.

Attracta O'Regan reported that in Workshop C, the expansion of the Courts Service's CSPE programme, 'Let's Look at the Law' was discussed, along with how scholarships

make a legal career more accessible and ensure the legal system reflects the diversity of Irish society.

Additional initiatives were also discussed, including the suggestion that outreach programmes be extended to Youth Reach and Board March, so that young people, community initiatives and people not reached through existing initiatives could be targeted.

Resources and lack of funding were identified as challenges in the area.

Workshop D – Accessibility of Courts: court procedures and legal representation

Mary Carolan, Courts Correspondent for the Irish Times moderated Workshop D, which she noted focused primarily on barriers to legal representation and personal litigants.

Gráinne McKeever, Professor of law and Social Justice at the University of Ulster spoke about lay litigants in Northern Ireland and the barriers they face there, including personal barriers, practical barriers (such as not knowing where to sit), and emotional and attitudinal barriers. The emotional barriers exist in the form of frustration and anger at what has happened to such litigants and the other barriers in place, in addition to anxiety about the process and a lack of trust. She said that often lay litigants feel that they are not valued and that they are regarded with distrust and an attitude that they 'should not be there'. Professor McKeever described how lay litigants suffer from a lack of information regarding accessing a lawyer. She offered three possible solutions were offered: 1) give these people lawyers; 2) make them lawyers; or 3) change the system to make it easier for them and remove barriers.

Turlough O'Donnell SC talked about the work of the Bar in *pro bono* cases. Barristers carry out research, drafting, advocacy, and training. The idea of digital advocacy was also discussed, as well as the experience of engaging with various actors in a digital platform. He pointed out that lawyers also benefitted from this experience, learning from other parties.

Gary Lee, solicitor at the Ballymun Community Law centre talked about what it is like to be at the coal face of access issues in Ireland. He said that approximately 70% of the clients of the centre have a disability of some kind. One of the issues to overcome in the centre, is tackling the view of many of the clients that the law is against them, and not for them. He indicated that the main legal issues addressed in the clinic are in the areas of family law, social welfare and employment law.

Eamonn Conlon SC spoke of how simplification is the most important thing that can be done to improve the accessibility of the court system. The role of lawyers themselves in increasing accessibility to the courts is important.

His Honour Judge Francis Comerford, judge of the Circuit Court discussed the way in which judges should approach the issue of lay litigants. He questioned whether the best approach to ensuring access to justice might be to ensure that everyone may have access to legal representation. Judge Comerford highlighted a need for better and more extensive legal aid to allow for proper access.

Workshop E – Access to Legal Services for People in Poverty and Disadvantaged Groups

In Workshop E, which was moderated by Philip O'Leary, Chair of the Legal Aid Board, the focus of the discussion was on the experience of the end user of the legal system and how legal services can best be provided.

Mark Willers QC discussed Gypsy and Traveller law in the United Kingdom, and the discrimination faced by Travellers, particularly those who cannot afford legal advice. He emphasised the need for training sessions for lawyers on how to address issues faced by Travellers, and how it makes economic sense for Travellers to have access to justice.

Brian Killoran, CEO of the Immigrant Council of Ireland addressed how mainstream legal aid is not always accessible for immigrants, as there can be more sensitive issues at play regarding gender and culture.

Ms. Justice Mary Laffoy, chair of Sage Advocacy, spoke about advocating for vulnerable adults and older people. She advocated for the introduction of a statutory scheme which should be monitored closely.

Tricia Keilthy, Head of Social Justice and Policy at the Society of St. Vincent de Paul talked about how sometimes it is not just access that is the issue, but also legal issues can trigger non-legal problems.

Philip O'Leary observed that the overall conclusion of Workshop E was that there is a cascade of problems for people in poverty and disadvantaged groups.

Workshop F – Equal Treatment in the Court Process

Workshop F, moderated by David Fennelly BL, concerned equal treatment in the courts, and how despite the promise of equal access to justice, many practical challenges arise.

Robbie Sinnott talked about the issues disabled people face in gaining access to justice at all levels including representation. He emphasised how the voices of disabled people needed to be heard when considering reform. He noted that there was an existing obligation on public bodies regarding the provision of sign language, but that there was a low level of knowledge regarding such obligations, and that more

needed to be done to drive compliance. He said that Disabled Persons Organisations needed to be prioritised in consultations regarding the accessibility of courts.

Dr. Fiona Donson observed that the Traveller Equality and Justice Project at University College Cork highlights the challenges faced by Travellers at all stages of accessing justice, and how hearing these voices and bringing them into reform systems is of fundamental importance.

Susan Kennefick of the National Disability Authority highlighted the existing obligations imposed on public bodies under the disability and sign language legislation. She spoke of a need to drive more awareness of these within the public sector and advocated for a more co-ordinated and collaborative approach to data sharing amongst the various justice entities.

Bashir Otukoya, Assistant Professor at Dublin City University, addressed how the courts needed to reflect the changing nature of Irish society. Noting that people can't be what they can't see, he spoke about the importance of diversity in representation in the legal profession to reflect the diversity of Ireland today.

Sinéad Gibney, Chief Commissioner of the Irish Human Rights and Equality Commission, spoke about the public sector equality and human rights duty under section 42 of the Irish Human Rights and Equality Act, and the potential for transformation in the legal system if greater consideration is given to this duty.

Ms. Justice Mary Irvine, President of the High Court, outlined the steps being taken by the courts to provide for an ever more diverse group of court users, and the need to ensure at all stages of the court process that it works for those it serves. She referred to new training programmes that had been put in place to assist judges and address issues such as unconscious bias. She said that key challenges had been identified, which was critical for moving forward.

Judge Tamara Lewis reflected on the development of the Equal Treatment Bench Book in the UK which was first created over 30 years ago. The Bench Book was designed and written by judges for judges at all levels and for all areas of law, including tribunal judges and is accessible to all online.

David Fennelly reported that overall the challenges identified in Workshop F were such that they could not be addressed by one group alone, but required collaboration by a wide range of stakeholders with a view achieving equality before the law and access to justice for all in practice. He suggested that the workshop discussion was not the end of the conversation, but the beginning.

Gerry Whyte concluded this portion of the plenary session by thanking the Chief Justice for his public service and for highlighting the issue of access to justice. He also commended the organisers of the conference, and suggested that it would be a catalyst for important steps going forward.

Closing remarks - Mr. Justice Frank Clarke, Chief Justice

Can I start by again thanking everyone involved in this conference. Yesterday I thanked the members of the Working Group, who formed a very coherent, effective and friendly group of people, which allowed us to get on with the work. Thanks to those who helped the workshop, in particular the team in the Law Society, staff of my own office and all others involved. Also today, as we have just heard in a whistle-stop tour, a huge number of contributors, moderators, have given a lot of thought into the diverse areas to which we need to pay attention.

I would also like to thank the judicial assistants, one of whom attended each of the workshops to prepare a report. It is obvious from the last half hour that we received only a very brief glimpse of what occurred in very rich conversations across a whole range of areas in the workshops. If that is all we ever got from this event that would be of some but limited use. I hope that we can arrange to have a much more detailed account of what happened at the workshops to inform the way in which we move forward. I would therefore like to thank the judicial assistants for undertaking this difficult task and hopefully the Working Group may be able to publish all of the contributions, including the accounts of the judicial assistants of the workshops and the keynote addresses.

However, as David Fennelly has just said, that will all be very interesting. However, if it does not lead to anything practical happening in the future, it will have been of limited practical value. Therefore, the issue is what we should do with all of this information. I think that themes that were discussed at the very beginning of the conference have, if anything, been reinforced. There is a huge interconnectivity between all of these issues. No one group has all of the answers, or if it did, would have the capacity to act accordingly. It requires a roadmap which involves taking into account a whole range of problems. It requires bringing on board the Government and many others – including the practising professions and those who have insights into unmet needs and how those unmet needs might be met. That is really the next stage. I think it probably does involve engaging with a wider group, as suggested by Eilis Barry, and building on what we have learned. I get the impression that even if we had a verbatim account of each workshop, that would be only scratching the surface in many areas of the issues which were discussed. In one sense, each of those areas would warrant a conference of its own. In another sense, that may devalue the overall picture as it is clear that there were common themes to the various workshops and perhaps overlapping solutions deriving from those common themes.

I think that the first step will hopefully be that we will reflect on what we have learned, and to devise the next steps to ensure that this event does not turn out to be a ‘talking shop’ during which everyone involved persuaded each other that we were all correct about everything. Rather, it should be an occasion which lays the foundation for putting in place measures which, over the next number of years, may do something to

genuinely improve access to justice. I would be pleased to continue to take a role of this, but it is important to now hear from Mr. Justice Donal O'Donnell who will, in nine days, take over as Chief Justice.

Closing remarks - Mr. Justice Donal O'Donnell, judge of the Supreme Court and designate Chief Justice

Mr. Justice Donal O'Donnell
Judge of the Supreme Court
and Designate Chief Justice

I am very pleased to be able to participate in this Conference. I know that some lawyers and commentators might say that the business of courts and judges is to determine the disputes which citizens bring to them, and that they should have no role or interest in whether people come to Court or not.

I take a different view. I warmly welcome this Conference and I think it is particularly appropriate that the Chief Justice has organised it. Picking up on something Eilis Barry said this morning, I would like to continue to build on the work of this Conference and the working group in the years to come.

Yesterday, Judge Síofra O'Leary of the European Court of Human Rights mentioned the fact that the significance of the decisions made by courts lies not just in relation to the decision in an individual case, important as that is for the parties. It also lies in the fact that those decisions, large or small, control a much wider field than just the dispute between the parties in the case. The decision itself, and the capacity it gives to lawyers and citizens to predict future decisions, controls or at least influences the life and conduct of people who might never come to Court. Professor Farrow yesterday described the fact that legal advice is much more significant in affecting people's reaction to law than going to court. To that extent the decisions of the courts are a vital strand in the fabric of society which hold it together and, at best, make it strong.

Without, I hope, undue complacency, I think it can be said that the quality of justice dispensed in Irish courtrooms is high and is certainly well respected by international standards. But there is a danger of a mismatch between the quality of justice dispensed in a court room and the impact of the law on the wider society which it seeks to serve. A good decision might be made if a case reaches a court, but if the cases which come to court are only a narrow and shrinking subset of the disputes that citizens have and wish to be resolved, then the capacity of the administration of justice to be a vital part in the structure of a humane society becomes compromised. If people do not know that the law provides an answer to their problem or a way to resolve their dispute, if they do not think they can get into court, if they cannot afford to get there or

at least take the risk of a loss, if they cannot get into a court because of delays that are too long, then the care and attention with which justice is dispensed inside a court room looks less impressive, more random and people – perhaps justifiably – become more sceptical of what lawyers like to call grandly the rule of law.

The distinguished American jurist, Lon Fuller, in his 1969 book, *Anatomy of the Law*, wrote about the state of the law as it was then perceived in the Soviet Union. The Constitution of the Soviet Union spoke in resounding terms about the rights of the people, but the law was not respected, or regarded as a worthwhile profession and, as Lon Fuller put it:

> "For the man in the street or in the field the most common response to the law was a gesture of helplessness and indifference. The law was like the weather. It is there, you adjust to it but there is nothing you can do about it except to get under cover when its special kind of lightning strikes".

Now, I am not suggesting we are at that point here. The law we have is not the will of distant rulers imposed upon the people. It is, by and large, law which tends to protect the weak from the strong, which seeks to maintain order and prevent chaos. There are very many people working in the legal system – lawyers, the staff of the Courts Service and judges – who work very hard to make the legal system work for the benefit of all citizens. But access to justice is critical. It is and should be a matter of concern to judges and lawyers and anyone interested in making society fairer, more humane, more considerate and ultimately more secure.

The second reason I particularly welcome this Conference, and congratulate and commend all the contributors, is that, indeed as the Chief Justice said yesterday in opening the Conference, it is based on a recognition that removing obstacles to access to justice is not a single problem with a single solution but a multi-faceted problem that requires many changes, large and small, in many areas. It certainly involves education, outreach and support. It involves voluntary initiative by lawyers, and the structured support by the organised branches of the legal profession. It also involves a stronger and more effective legal system. It may, as the Minister said yesterday, involve provisions controlling the costs of proceedings and as importantly controlling the procedures that lead to costs, and may involve other initiatives that have been touched on in relation to representative actions on behalf of groups, and the possibility of third party funding. It may also involve further litigation, whether in the Irish courts or in the European courts, as discussed by both Judge O'Leary and the Chief Justice yesterday. Some people may find the range of issues and tasks depressing, but I think it is both pragmatic and at one level encouraging. It means there are many ways in which we can all make a difference in different ways. There are many ways in which access to justice can be improved progressively and incrementally, with a significantly cumulative impact. It is not a job for one group or one initiative – it is a job for us all.

In that context, Judge O'Leary discussed yesterday one case: *McCann v. Judges of the Monaghan District Court* [2009] 4 I.R. 200. That was a case which challenged and ultimately led to the striking down of the provisions for imprisonment for debt. It originated in what was then the Northside Community Law Centre and came to the Bar *pro bono* scheme, and I was honoured, indeed, to act in that case. It resulted in, if I may say so, a characteristically excellent judgment by Ms. Justice Mary Laffoy, who I am pleased to see here today, which was so compelling that it was not appealed to the Supreme Court by the State. In fairness, perhaps, things were already shifting at a policy level and it may be that the case and the judgment were a catalyst in bringing about a change in that area. But I thought then, and I think now, that the most significant piece of lawyering in the whole case was the then solicitor in the Centre, now Judge Colin Daly, who on at least three occasions went to Monaghan in wintry conditions to seek to prevent the Court making an order of ultimate imprisonment for non-payment of debt – even though that would have had the effect of destroying the case as a possible vehicle to challenge the legislation. And that was an example, I think, of a multi-faceted approach. It meant that when the case came to Court, it was not a cipher just for a legal argument constructed in an affidavit. It was demonstrably a case that had affected the lives of real people and showed that access to justice is important not just because of its policy significance but because of its capacity to affect the lives of real people in their day-to-day lives.

Now, that is one case, but perhaps one of the most important cases, and I think inspirational cases decided by the Irish Courts in the last half-century is *The State (Healy) v. Donoghue* [1976] I.R. 325. I remember, as a young lawyer making my way seeking judicial review of cases in which legal aid had been refused to criminal defendants, admiring the judgment of the then-Chief Justice Tom O'Higgins and marvelling indeed at the judgment of Seamus Henchy, and I am afraid recognising myself when he described the need for legal aid even when the matter appeared straightforward because of that "fumbling incompetence that may occur when precipitated into the public glare and alien complexity of courtroom procedure". That decision not only continues to be cited, it continues to be a rich source of inspiration, encouraging further developments in the law. To borrow a phrase from another area of law, it is certainly not beyond the age of child-bearing. And it is particularly appropriate to consider that case in the present context. The late Rory O'Hanlon acted as senior counsel *pro bono* in that case, and there were two junior counsel, the most junior of which is recorded in the Irish courts as Mr. G.B. Clarke. There are a decreasing number of people who know that Frank was once George Bernard Francis, but it is perhaps particularly appropriate, therefore, that a career at the Bar which started with ground-breaking litigation on the subject of legal aid should come to a close as Chief Justice promoting a cross-disciplinary conference on the broader policy and questions involved in access to justice. That is, perhaps, its own example of a multi-faceted approach to the issue.

I hope that the initiative this Conference represents will stimulate developments large and small. I congratulate and commend everybody involved in this Conference and who has given their time, energy and expertise to it, and I hope we will be able to maintain and indeed develop the Chief Justice's working group on access to justice in the years to come.

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